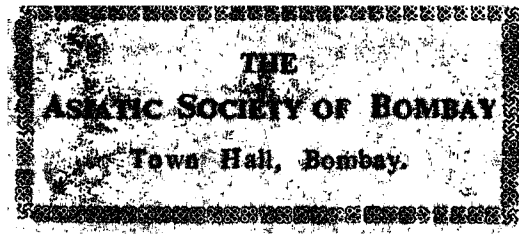
00108169



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ADJUDGED BY

COURT OF SUDUR UDALUT,

FOR THE

PRESIDENCY OF BOMBAY,

BETWEEN THE YEARS

A. D. 1800 AND A. D. 1824;

DIVIDED INTO TWO PARTS

THE CASES IN THE FIRST BEING SELECTED FROM THE DECISIONS OF THE COURT IN BOMBAY, BEFORE ITS REMOVAL TO SURAT, ON THE

1st January 1821,

THOSE IN THE SECOND FROM THE DECISIONS AT SURAT UP TO THE

31st May 1824;

108169

WITH AN

APPENDIX,

AND AN

INDEX TO THE REPORTS.

VOL. II.

Bombay:
PRINTED AT THE COURIER PRESS,
NO. 1, CHURCH GATE STREET, BY SHREECRUSTNA JAGONNATHJEE PRABHOO, HINDOO,
OF NO. 15, PALLOW STREET, WITHOUT THE FORT OF BOMBAY.

1825.

00108169

Page.	Line.	
3	4	For *Cout* read C
—	Last but three.	—— *Coods* — *G*
—	Last.	—— *or June* — *an*
8	7	Read, lost by wreck *&c.*
—	[illegible]al note.	For Sitting *Ju[illegible]s* re[illegible]
9	Last.	Read *Appellant* having fully *[illegible]*
11	10	For Houses Bhugwan read Houses *to* Bhugwan.
15	11	For *part* read *party.*
16	Heading of No. 4.	Read, *Wife* of Kaseeram his son.
23	9	For *la er* read *latter*
—	19	For *taking* read *taken.*
24	16	For *given* read *giving.*
—	Heading of No. 6.	Read, daughter *of* Nundram.
27	15	After Halaee, read, *and a fourth not named.*
	16	For *Sect*, read *Sects.*
29	Note, line last but two.	Read, acquire a *title.*
32	20	For *Lukana* read *Luhana.*
34	Note.	For *Thide* read *Ihide*, or more correctly *Ukud*, and the s elsewhere throughout the Volume.
37	4	For *one half of which*, read *one of which.*
—	Last but two.	For *Shahib* read *Sahib.*
38	11	For *Koolkurne's*, read *Koolkurnee's.*
39	14	For *Nezul* read *Nerul.*
40	13	For *Jummalamdee* read *Jummabundee.*
41	12	For *expences* read *expenses.*
45	25	For *exactions* read *exaction.*
58	Note.	For *eight* read *eighth.*
68	15	For *so* read *to.*
75	Last but three.	For *with* read *which.*
78	20	For *leving* the *palace* read *leaving the place.*
81	Note (1)	Add, and this vol. page 450.
87	Note.	For *Mirnuye* read *Nirnuyu.*
90	1	For *Munoo Ch.* 19*th* read *Munoo Ch.* 9*th.*
91	11	For *Nadhow* Rao Siwaee read *Madhow* Rao Siwaee.
99	Marginal note last line but five.	Read, *proposed its reversal.*
100	10	For *havve* read *have.*
107	12	Read, *that the Deed.*
112	11	Read, to have *the* attachment.
116	Last line.	For *Parent's* read *ancestral.*
130	3	For *admiting* read *admitting.*
—	Marginal note line 5.	For *instanse* read *instance.*
—	Last but one.	Dele *Bye Bat*, here and elsewhere.
139	Marginal note line 12.	For *Respondent's* read *Appellant's.*
142	13	For *instituation* read *institution.*
143	Last but three.	Read, *By law* the surviving.
145	Marginal note last line but five.	For *Court's* read *Court.*
156	Last but two.	Read, and that *a* Gift.
169	Marginal note.	Read. T. Kentish, *Acting* Judge.
173	2	For *Dnyat* read *Nyat.*
177	21	Supply, *Appellants last exhibit was*, the order.

206	12	For [illegible]
207	Marginal note line eighth.	For *names* of the Firm[illegible] *me* of the Firm.
216	Last but one.	For *oonnexion* read *connexion*.
218	1	For *practise* read *pr etice*.
——	3	Read, 'could not be done, *after* it was once contracted.—*As a* general rule.
——	11	For *Unjoomuns*, read *Unjoomun*.
221	Last but two.	Read. to try *the* right.
——	Last.	For *opinion* read *opinions*.
225	Last but four.	For *sitle* read *title*.
228	Last but four.	For *Suits* read *Suit*.
240	10	Read. *kool* mooddaee bu *duhud*.
252	24	For *Miyal* read *Miyaden*.
254	2	For *Goonuhgare* read *Goonahgaree*.
257	19	For 25d and 29th read 25d, 26*th* and 29th Rujub.
260	2	For *Dowers* read *Dower*.
262	13	Read, represented *by proxy*, and the proxy.
——	Last but four.	For *give* read *giv-ing*.
280	23	Read, *in* the employ.
289	8 and 9	Read, from *such a practice*.
——	4	
297	24	For 1825, read 1815.
309	Marginal note line 14.	For *Brother* read *Brothers*.
312	18	For *momey* read *money*.
321	Marginal note.	Read claim by *the son* of a person.
323	Do. Do.	Read, Dismissed for want of *proof of injury and of* proof that &c.
329	14	For *thier* read *their*.
339	Marginal note.	Read, Sudur Udalut, *Pauper* Appeal.
343	Marginal note.	Read, claim by *the*.
——	Do.	Read. Dismissed *on* proof.
346	20	For *their* read *his*.
352	Marginal note. Line 9th.	Read, a deed of *mortgage with* conditional sale.
354	Last but two.	For *Chandlas* read *Chandla*.
399	Marginal note.	For *Sudur* Udalut, read *Surat* Udalut.
——	Heading of 177	For *Dhoollubh*, read *Dhoollubh*.
449	Note.	For Case No. 133, see Case No. 132.
491	Heading of No. 94.	For *Boolaklee*, read *Boolakhee*.
606	15	Read, Respondents now produced three papers; *First*. a Furman.
637	25	Read, by Appellant in *his* Plaint.
663	21	For *remarks* read *marks*.
666	Note.	The passage in the first volume here referred to, having been corrected and the sheet since reprinted, it may now be considered as an authentic extract from the Muyookh.
669	Last but one.	For *state* read *stake*.
685	Marginal note.	For Kherawal *Bunyuns*, read Kherawal *Brahmuns*.

SELECT REPORTS of CASES decided by the SUDAUT for BOMBAY, Sitting at SURAT, between the 1st January 1821, and the 31st May 1824.

THE constitution of the Sudur Udalut, as remodelled by Regulation 5th of A. D. 1820, ("being a Regulation for abo-"lishing the Provincial Court of Appeal and adapting the "powers &c. of the Sudur Udalut to the change, and for "removing the latter Court from Bombay to the city of Surat") will be seen to the best advantage by the following Extract from the Minutes of a Court at which all the four Judges were present.

Under the authority vested in the Court by clause the fourth of Section 28th of Regulation 5th of A. D. 1820, which clause declared "that the Judges should regulate their own sittings "in the manner most convenient," and in virtue of clause the first of the same section, which provided "that to facilitate the "dispatch of business a single Judge should hold separate "sittings of the Sudur Udalut for the hearing of all causes in "the first instance, with the same powers as if held before two "or more Judges," and that "he should be competent to pass "orders and judgment in conformity with the Regulations, "provided such order or judgment went to affirm the decision "and order of the lower Court." That "whenever a single "Judge trying a cause or other matter should be of opinion "that the decision or order appealed from ought to be reversed or "altered, as well as in every case of doubt and difficulty, he "should only record his sentiments on the case and refer it for "the decision of a Court composed of two or more Judges, "whose decision, guided by the Rules laid down for the settle-"ment of a difference of opinion between them, should be "carried into effect, the Judges present at the final sitting sign-

"ing

such Decree or order, to which the signature of the Judge who first sat was not to be considered requisite."

It was resolved, that a single Judge should sit on Mondays, Tuesdays, and Wednesdays, and take up the causes as they occurred in the Public Notice, as far as he could go. That on Thursdays and Saturdays two Judges should sit for the hearing of all causes referred to the full Court by a single Judge, and for all Criminal business referred from Zilla Courts to them (in their capacity of Judges of the Sudur Foujdaree Udalut). That Friday being the day appointed for Moohummudan prayer, should be set apart for the hearing of Petitions and for arrears of Criminal business and miscellaneous duties, and that on that day three Judges should sit.

That the Judges should take the above duties in regular succession, the absence of any Judge prevented from attending by indisposition or other unavoidable circumstance being supplied by the next in succession.

That the Deputy Register, Deputy Surishtedar, and a Law Officer of each religion, should attend the Sittings of a single Judge, but that at all other sittings the Register, the Surishtedars, and all Law Officers should attend the Court.

Warning was given by the Court to every person on its establishment, that as the liberality of Government had put them beyond the temptation of illegal gains, they had no right or title to fees of any description whatever, and they were enjoined to refrain from copying pleadings, or papers, for parties in suits, either in office hours or at any other time, or interfering with or assisting them in any way beyond the strict line of their duty, under pain of instant dismissal from office.

N°. 1.

HUREE BHAEE DHOOLLUBH,.....*Appellant*,

VERSUS

BHIKAREE BHOOKUN.....*Respondent*.

Ahmudabad Udalut, Charles Norris, *Acting Judge*.

THIS Suit was filed by Appellant in the Zilla Cout on the 31st August 1818 in the Amount of Rupees 3,000, the Value of 49 Bales of Cotton belonging to Respondent, and deposited by him at Gogo in the hands of Lal Bhaeechund, his Agent.

Goods taken up on credit from a merchant and deposited with the buyer's agent, become the property of the buyer, and do not revert to the seller in event of the buyer's failure before payment for them.

An order by the buyer in such case for their delivery to a third person, held good against the claim of the seller for their recovery.

Respondent suffered Judgment to go by default in this Suit, and in No. 6369 of 1819,

ROOSTUMJEE NOWSHIRWANJEE, on the part of HORMUZJEE WARIA,..... } *Plaintiff*,

VERSUS

BHIKAREE BHOOKUN,.....*Defendant*,

filed on the 17th February 1819, to recover from Defendant (now Respondent) Rupees 5,000, Amount Value of a short delivery of Cotton, under an engagement he had entered into with Plaintiff.

The Court brought on these two Suits together, as both of them, in consequence of Respondent's failure, turned upon the Right of the respective Plaintiffs to these Bales of Cotton at Gogo.

The Plaintiff in the first Suit (now the Appellant) set forth that Respondent's Brother Prubhoodas came to his Shop at Dholera in Posh A. S. 1874, or January 1818, and presented a letter from Respondent, in which Appellant's house was requested to supply his Brother, the Bearer, with Goods, which was done accordingly, Appellant himself paying the Owners of the Goods for whatever he took up on Respondent's letter. In Vaishak and Jesht following, or May or June, Prubhoodas drew

Bills

Bills in Appellant's favor on his Brother, Respondent, at Surat, for Rupees 6,125, but Respondent failed before they were paid. 49 Bales of Cotton, part of the Goods he had purchased for Respondent's Brother, were then in the hands of Lal Bhaeechund at Gogo, within the Court's Jurisdiction, and he prayed they might be sold for his benefit, for though Respondent was himself an inhabitant of Surat, his Brother Prubhoodas had agreed to take Credit for the Proceeds, on account of the dishonored Bills.

The Cotton in deposit at Gogo was sold by order of the Court, and the amount, Rupees 4,209-2-00 placed in the Treasury.

Roostumjee, the Plaintiff in the Second Suit, set forth that Respondent on the 2d Falgoon Sood 1874, or 8th March 1818, entered into a contract to supply him with 101 Khundees of Cotton, to be delivered in Bombay. Of this quantity 33 Bales had been duly forwarded to Bombay, and 101 Bales more were landed at Surat and deposited in a Warehouse, the Key of which was given to him, Roostumjee. 49 other Bales, those now in dispute, had been landed at Gogo and taken charge of by Respondent's Agent there, Lal Bhaee, upon whom he gave an order for their delivery to Roostumjee, but the Agent on receipt of the order refused to deliver them up, under pretence of the present Appellant's prior demand against the goods.

The Court called up Lal Bhaee, who produced a letter received by him on the 11th Ashad Vud 1874, or 20th July 1818, from Respondent, advising of his having delivered to Roostumjee an order upon witness for giving up 29 of the Bales, but forewarning him by this communication not to surrender them. On the 13th or 14th Roostumjee's Agent did accordingly present this order, and another for giving up the whole 49 Bales, which witness had however declined complying with, because of his private instructions from Respondent. He made Oath at the same time that he himself had no disagreement with Respondent, nor claim upon him.

The Goomashta of Appellant's Dholera House proved that the duties on the Cotton were paid in Appellant's name, and the Invoices drawn out in it likewise, in order that Appellant might keep the goods in his own possession, and not deliver them up to Respondent's Agent in Bombay until they were paid for by him. Respondent however effected the Insurance at Surat in his own name, and nine Bales of Cotton lost by wreck debited in the Profit and Loss account against Respondent as to be borne by him.

The Court decided upon the foregoing facts that the property in question was clearly the property of Bheekaree Bhookun (Respondent) because he would have been liable for all loss, and the goods were insured as his own. Possession had also passed from Appellant to Respondent, by the agent of the latter taking charge of these Goods. It was equally clear, that Respondent, *the possessor*, made them over to Hormuzjee, which transfer must stand good, for the subsequent fraudulent order of Respondent reversing it could not possibly be confirmed under this view, the Plaintiff Hormuzjee was declared justly entitled to the proceeds of the 49 Bales of Cotton, and Appellant's claim to the same was dismissed, he paying Costs.

Decree 30th July 1819.

This appeal, which stood No. 733 on the file of the late Court of Appeal, was brought on under the constitution of the new Sudur Udalut, for hearing before a single Judge.

Sudur Udalut, *Sitting Judges*, J. Elphinston, *Chief Judge*.

The sitting Judge concurring in opinion with the Zilla Court, that the Right of Property in the Cotton had passed to the nominal Respondent, Bheekaree Bhookun, affirmed his decree which rejected Appellant's claim upon the Goods, with Costs.

Decree 12th March 1821.

N°. 2.

HUREEWULUBH GUNGARAM,.....APPELLANT,

VERSUS

KESHOWRAM SHEODAS,.....RESPONDENT.

Surat Udalut, W. A. Jones, *Assist. Judge.*

THIS suit was filed by Appellant, as Plaintiff in the Surat Court, on the 5th January 1819 in the amount of Rupees 800 value of Appellant's third share of property left about 3 years ago by his Uncle Bhugwandas Khooshal, and detained by Respondent, one of the Coheirs, but justly due to Appellant by the Laws of the Shastr.

Claim by Appellant as coheir, with Respondent and another person, of a deceased Uncle, for his third share of the Estate. Plea set up by Respondent of a Will by the Uncle in his favor to the exclusion of the other two, who were privy but not objecting. Law Officers declared each coheir entitled to an equal share, unless the others resigned in favor of Respondent. Assistant Judge held such consent to have been shewn, and dismissed the claim. Court of Appeal declared explicit resignation necessary to destroy the claim, and referred the case. On the new trial the Zilla Court awarded a third share to Appellant after deducting a certain sum from the whole Estate for expenses, which decision was affirmed by the Sudur Udalut.

Respondent pleaded against this, that the deceased long ago adopted him as his Son, and made a Will in his favor 3 years and 8 months since, which was duly executed and registered; and moreover, that the property *claimed as left by the deceased* was acquired principally by the exertions of Respondent himself, who from his own Funds so raised had purchased two Houses in the name of the deceased, which, with the exception of another House belonging to the deceased and mortgaged by him, and Rupees 400 worth of other effects, constituted the whole of the property left him. He himself performed the funeral and other expenses of Bhugwandas, and the proper time for Appellant to have come forward, was when the Will was publicly passed in Respondent's favor. This Will provided for expending the whole of the property therein bequeathed, either in funeral expenses or payment of just debts, and in fact Respondent had suffered loss on the occasion.

Appellant replied that a Will, even if really passed by Bhugwandas, would not be allowed validity in opposition to his lawful Rights, nor could the person in whose favor it was passed, take possession of the inheritance belonging by law to another. Respondent's plea that the houses and Effects were acquired by himself,

himself, was entirely destroyed by the tenor of the Will (of which he had obtained Copy from the Register's office) which expressly declared the property to be that of the Testator alone. As to his having paid the debts of Bhugwandas, the Will again shewed no debts to be due, whilst Appellant had no right whatever to make the funeral expenses, and his doing so did not therefore constitute the right, but that of the Heir still remained good.

Respondent said the account of Debts and Credits was quite distinct from the Will, which he thereupon exhibited.

It bore date 8th Rujub 1830 A. H. or 17th June 1815, being passed by Bhugwandas Son of Kooshal Son of Nana by Proxy of Panachund Futtechund, in favor of Keshowram Sheodas, bequeathing to him the residue of the Testator's property, (then consisting of three Houses, Household furniture, and Effects, Value Rupees 400,) *after Payment of* Funeral, and other expenses, on condition of his maintaining the Testator during the rest of his life. No mention was therein made of Payment of debts.

The Account given by Respondent of expenses borne by him, shewed a Disbursement of Rupees 1,305,-0-50 for food, Medicines, and Medical attendance procured for the deceased, religious Offerings and funeral expenses inclusive, also of an Item of Rupees 400 expended in Repairs to the houses.

Appellant handed up a question to be put to the Hindoo Law Officers, whether, in a case where there are three Persons equally related to each other, within the seventh degree, and equally entitled each to a share of the property of a certain person, that person can by Will bequeath the whole of it to one alone, to the prejudice of the other two, or not?

The Shastrees answered that the rights of the two disinherited relations would not be destroyed by such a will, it being in opposition to a clear and explicit Law of the Shastr on the point.

(1) Notwithstanding such Will, each would be clearly entitled to a third share, under the authority of the Mitakshura and Muyookh.

Respondent asked whether, if this third person had been adopted in his infancy by this common relation, being Childless, and brought up by him; and if this adopted son returned the obligation by maintaining his Father in his old age from property acquired by his own exertions, and bought Houses in the Father's name with Funds so acquired by himself, if the Father passed a Will in this adopted Son's name when the other two Coheirs were present but not objecting; and if the Son paid the debts and funeral expenses of the testator; under all these circumstances could one of the two coheirs come in and claim his share.

The Shastrees replied, had he been actually adopted, instead of merely being brought up, as appears only to have been the case, he would be certainly sole Heir. In the second case, if true, there was no necessity for the Will, which at any rate should have specified such a transaction. (2) In the third case, if the coheirs should consent, they had no longer any right to the property. (3) With respect to the fourth, funeral expenses must

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(1) Mit. Book second, leaf 10th, page 1st, line 6th, Yagnyuwulku, It is clear that the Dhurmu Shastru "is of more force than the Urthu Shastru." The commentary explains, that, on a difference occurring between the Urthu Shastru and the Dhurmu Shastru Smriti, the Dhurmu Shastru must be taken as the authority in preference to the Urthu Shastru. The Dhurm Shastru seems here to mean, "The letter of the law," the Urthu Shastru, that which a man under particular feelings would wish to be the law. The former may be also called the "spirit of the law," the latter, "its letter," or the Urthu Shastru may be taken as the Rule, of which the Dhurmu Shastru exhibits the exceptions. The positive law declaring the equal rights of the three Relations in this case, is that propounded by Yagnyuwulkyu, "The wife and the daughter also &c.", wherein all Gentiles are equally included, The bequest of the Common relation in favor of one of the Coheirs, formed the Urthu Shastru.

(2) Because the property so acquired by himself was not liable to partition, by the law quoted in note (1) to Bombay Cases No. 51.

(3) Mit. Book second, leaf 47th, page 2nd, line 7th, Yagnyuwulkyu, "The separation of "one who is able to support himself, and is not desirous of participation, may be completed "by giving him some trifle," which the commentator thus interprets. "To one who is him-"self able to earn wealth, and who is not desirous of sharing his father's goods, any thing "whatsoever,

must be defrayed from the property left by the deceased, (4) and if he left none, then the (three) Heirs must defray them in equal proportions. (5) If the one choose to do so singly, there was nothing against it. The debts unpaid lie against the estate, and if no funds exist, the debts do not fall upon the relations (6) but any one is at liberty to pay them if he like. The relationship of the three being equal, their claims to the estate of the deceased are likewise equal, but the other two have none against the property, if actually acquired by the third of his own exertions.

The first point is treated of in the Duttuk Prukurn. The second in the Svutv Prukurn. The third in the Daya Prukurn, in that part where the matter of an heir who has resigned all claim to his inheritance is considered together with the rights of the other heirs. The fourth is shewn in the Kriya Nirnuye Anoosar. The fifth in the Runu Prukurn.

Four witnesses, called by Respondent, deposed to the truth of the Will, and to Appellant having fully agree to its being passed

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" whatsoever, though not valuable, may be given, and the separation or division may be " thus completed by the father, so that the children, or other heirs, of that son, may have " no future claim of inheritance."

(4) Nirnuye Sindhoo, Book third, Chapter on Obsequies, Vishnoo, " And Even if the " whole family of the deceased died with him, still let his obsequies be celebrated from " his own property."

(5) Mit. Book third, leaf 6th, page 2nd, line 3rd, " How then? The funeral obsequies " must be performed by the son. If there be none, then by any of the nearest Supindas; " and on failure of them let the obsequies be performed by the Maternal Supindas, and " other Relations in order, for thus is it written by Goutumu in his Smriti, On failure of " Sons let Supindas, Maternal Ditto, and pupils give the funeral oblation. On default of " these, the family Priest, and Preceptor" (in order). The Heirs must defray them in this case out of their own pocket, for it is said in the Guroodu Pooranu in the words of Vishnoo, " Impurity, the consequence of death in a family, remains attached to blood rela- " tions of the deceased so long as they neglect to complete the funeral oblation."

(6) Vide note (3) to Bombay Cases No. 37 and Mit. Book second, leaf 20th, page 2nd, line 9th, Bruhusputi. " The sons must pay the debt of their father, when proved, as if it " were their own, that is with interest; the son's son must pay the debt of his Grandfather, " but without interest, and his son, that is the great grandson, shall not be compelled to " discharge it, unless he be Heir and have assets." Cole. Dig. Vol. 1st, pages 295-6.

passed, and having attended the Feast given to the Cast by Respondent after the death of Bhugwandas.

A Creditor of Bhugwandas deposed that Respondent had paid off his debt.

Panachund Futtehchund declared that by desire of Bhugwandas he took the Will to Appellant for his signature; that he refused to sign the will on account of his own claim, although offered Rupees 200 to do it, and that the Will remained for two months longer unregistered in consequence. This was corroborated by another witness.

The Assistant Judge observed from the pleadings, answer of the Law Officers, and evidence adduced on both sides, that the statement made by Respondent of Appellant's being consenting to the writing of a Will by Bhugwandas was not contradicted by the evidence brought by Appellant, nor by the pleadings. The Will was therefore admitted to be valid according to the answer of the Law Officers on the third point, and the Appellant's suit was dismissed, he bearing Costs.

Decree 21st August 1819.

Court of Appeal, J. Elphinston, *Chief Judge*, J. Romer, *2nd Do.* J. Sutherland, *3rd.*

The Court of Appeal observed that the Hindoo Law required that the consent of an Heir to the willing away of property to a third person, should be expressed in the Will, to be duly authenticated by him, whereas in the present case no such consent appeared to have been legally obtained. The Will was therefore adjudged to be invalid, and incapable of depriving Appellant of his right to a third share of the Estate of the late Bhugwan. The Court consequently passed an Interlocutory Decree, reversing the decision of the Assistant Judge and referring the case again for fresh investigation and decision in the Zilla Court of Surat, wherein the counter claims of Respondent should be duly attended to. Costs to be determined in the final decision in the Provincial Court.

Interlocutory Decree, 13th June 1820.

Suit revised before, J. Kentish, *Reg.*

The witness Panachund Futtehchund, being again called up, deposed that Bhugwandas owed no debts. The Houses

might

might be worth Rupees 1500; his ornaments, which witness specified, Rupees 500 more; and other effects to the value of Rupees 400; and that all this property came into Respondent's possesion.

Other witnesses were called by Respondent to shew that the Houses cost in repairs between 400 and 500 Rupees, and that he had expended about Rupees 800 in funeral ceremonies for the deceased Bhugwan, and had paid certain debts of his. Mt. Champa, daughter of Poorshotum, deposed that she sold one of the Houses Bhugwan, for Rupees 250, of which he paid Rupees 200 at the time through Respondent, and made a transfer of the balance upon Respondent, who paid it afterwards.

Respondent then exhibited copies of the Title Deeds of the Houses, being three Deeds of Sale, one from Deookoonwur Baee, daughter of Rutmul, for Rupees 211. Another from Dhun Baee, for Rupees 251. The third from Jogee Jugdeesh, for Rupees 201, all to Bhugwan.

In summing up the evidence the Register observed, in respect to the first Item claimed by Respondent, the title Deeds shewed the original value of the premises to be Rupees 663, and a claim of Rupees 400 on account of repairs under those circumstances did neither appear probable nor was it satisfactorily supported by evidence, as only one witness deposed to the possibility, in his opinion, of so much having been expended; and even granting the fact, the act of Respondent in incurring this enormous expense would not involve the Appellant's liability and responsibility. The claim on account repairs was therefore declared cancelled in virtue of the occupation of the premises by Respondent. In regard to the next plea, for reimbursement on account of sums paid to the creditors of the deceased, the fact was not sufficiently established by the evidence adduced, for in the Will itself no provision was made for the liquidation of debts, which was strong presumption that none existed, and no Books, receipt, or Deed of Release or other writing from the

Creditors

Creditors had been produced, and it was scarcely possible to suppose that an individual liquidating the debts of a deceased person, would not, previous to payment, take some acknowledgment of this nature, more necessary in this instance when there were several heirs surviving besides Respondent. In order to shew part of the property not to belong to the Estate of the deceased, the witness Mt. Champa had affirmed, that she received the purchase money of her house from Respondent himself, but her name as the Seller of a house to Bhugwan was not to be found in any of the Title Deeds, which made it evident that she could not have disposed of any house, and threw suspicion upon the rest of the evidence brought forward by Respondent. With respect to the expenses of the funeral, and other ceremonies performed for the deceased, no doubt existed but that they had been incurred by Respondent, but from his station in life it did not appear in any way imperative or necessary for him to expend the sum stated under that head in the account. After due deliberation, the sum of Rupees 300 was considered amply consistent with the means of a person of the Respondent's Cast and Profession. That sum was therefore adjudged and fixed, and deduction being allowed to Respondent for it, one third of the residue of the whole Estate of Bhugwan was decreed to Appellant.

Sudur Udalut, *Sitting Judge*, J. Romer, *Chief Judge*.

The Court concurred in the view taken of this case by the Zilla Register, observing that the evidence for Appellant was equally inconclusive with that for Respondent, and respecting the witness, Mt. Champa, the difference of name was satisfactorily accounted for by her having assumed the above name after her marriage, instead of Dhun Baee, her real name. The decree had not set forth what the divisible property consisted of, nor its amount. The houses might be divided as required, and the household effects taken at the valuation noted in the Will, but the value of the Jewels could only be guessed at. Their value was after due enquiry fixed by the Court at Rupees 300, and the Decree of the Register was thereupon affirmed, in the

following

following words. That the sum of Rupees 300, on account of Funeral expenses be allowed to Respondent from the Estate of the late Bhugwandas Khooshal, and that (out of ?) the said Estate, consisting of three Houses, Household effects to the value of Rupees 400, and Jewels to the value of Rupees 300, (the residue ?) be divided into three equal shares, one of which be made over to Appellant, as his full and entire right, Respondent paying Costs.

Decree 26th Feb. 1822.

N°. 3.

RAJARAM KESHOWRAM, ... APPELLANT,

VERSUS

KHOOBCHUND MOOLCHUND, deceased, and now represented by MR. MANKOONWUR and JARAO, ... } *RESPONDENTS.*

THIS suit was filed in the Court of Surat on the 31st January 1819, by the late Respondent, Khoobchund, on his own part and on that of his younger Brother, then a minor, to eject Appellant from a house, situated in the Nag Shet Quarter of the city, which was bought by Respondent's Father in A. S. 1852, or A. D. 1796, for Rupees 1,251, and lent by him as a residence to Appellant, then his servant, who now refused to evacuate it, though called on to do so by Respondent on leaving his service lately.

Surat Udalut. T. M. Keate, *Judge.*

Claim by Respondents for a house lent by their Father to Appellant on sufferance, whilst in their service.

Assignment of it to Appellant by his Brother-in-law, the rightful owner, pleaded as a Title, but under an admission that his Brother-in-law's widow had executed a Deed of sale of it to Respondent, with intent to deceive creditors.

Zilla Court held that the sale, whether

Appellant answered that the Respondents' claim was false, for the house in question originally belonged to Girdhurlal Poorshotum, his Brother-in-law, who had made it over to himself 50 years before, in consideration of his debts having been paid to a large amount by Appellant, who defrayed his Funeral expenses also, and that he held possession, residing in it all along, though his Sister Meethee Baee, to deceive her Creditors, had made

collusive or not, must be binding against Appellant, and restoration of the house to Respondent was awarded. Decree affirmed by the Sudur Ujalut.

made out a Deed of Sale, in the name of their master, Respondent's Father. Appellant however continued to reside in the house till A. S. 1859, or A. D. 1801, when he left the Key of it in Moo'chund's possession and went on account of a Marriage, to Senhore. During his absence, Respondent and his Brothers took this Deed, with other papers, out of a chest in the house, and made it over on account of a debt to Atmaram Bhookun's House, which afterwards got it attached for their claim. The Respondents had since paid off their debt to Atmaram Bhookun, but refused to restore the Deed which they had thus got hold of.

Respondents denied this story, and said if it had been true, a complaint would no doubt have been made against them. Their Books would show that it was a bonâ fide purchase made by their Father from Appellant's Sister Meethee Baee.

Appellant again pleaded that he had held possession for 37 years, of which his Brother-in-law had been dead 35, and that this was alone sufficient to prevent Respondents' claim from affecting him, under the limitation of 12 years' possession.

One witness, Purmanund Hureedas, Goomashta of the Firm of Heera Raeekurn, appeared and gave evidence that his master Manukchund Hurukchund about 4 years before redeemed the House in dispute from Atmaram Bhookun's Firm, to whom it before stood pledged, at the desire of the Respondent, who then gave him a mortgage Bond registered on the 9th August 1815 and the original Deed of Sale of the house to Respondents' Father by Meethee Baee.

The Judge observed, that the Deed of Sale executed in A. S. 1852 was admitted by Appellant, and even if it were a fraudulent sale, Appellant could not be allowed to benefit by his own wrong. The Deed had been in Respondents' possession up to March 1814 when the mortgage to Atmaram Bhookun was registered, and it did not appear that Appellant ever made any

claim

claim for it. Judgment was therefore given in favor of Respondent to put him in possession of the house sued for. Decree 22d Oct. 1810.

An Appeal was presented against this decision to the Provincial Court, which allowed Appellant to sue "in formâ pauperis," after due proof made of his inability to bear the expense of carrying on the Suit

In consequence of the dissolution of that Court, the cause came on for hearing before the new Sudur Udalut. The pleadings were to the same point as in the Zilla Court, the proprietary right to the House under litigation, Appellant urging moreover that he should have been made a part to the mortgage. Sudur Udalut, *Sitting Judge*, J. Elphinston, *Chief Judge*.

The Court called upon Appellant for proof of his claim, when he referred the Court to his pleadings.

Respondents being desired to produce the Deeds adverted to by the lower Court, replied that they were in the possession of Purmanund Hureedas, who, they prayed, might be again summoned, and ordered to produce them.

This witness attending, presented to the Court the Deeds he had mentioned in his former Deposition, and which the Law Officers pronounced on examination to be perfectly satisfactory. The witness further explained, that with the House in question Meethee Baee mortgaged two others at the same time to Atmaram Bhookun altogether for Rupees 1,600, which three houses his master redeemed from the latter for Rupees 1800.

The Court observed that the objection taken by Appellant to his not having been made a party to the mortgage, was quite immaterial to the merits of the case, nor could the length of time he might have occupied the Premises be of any avail. The point to be established was not the period of occupancy of the House by Appellant, but in whom the proprietary right vested. Appellant admitted the house to have been the property of Girdhurlal Poorshotum, as was also proved by the Title Deeds,

produced

produced by the present mortgagee. The deed of Sale by Meethee Baee shewed the transfer of the property to the deceased Respondent's Father, Moolchund Nathjee, and the Court resolved therefore to Affirm the decree of the Zilla Judge, all Costs being borne by Appellant, to be recovered from any property of his hereafter forthcoming, and Respondents paying their own Wukeel in the first instance Rupees 15-0-04, or one fourth of his established Fee, agreeably to Clause 2d Section 10th Regulation 1st of 1816 which provides "that if the claim of "the Plaintiff be dismissed with Costs, the Court is authorized "and required to only levy from the Defendant such part only "of the established Fees for his own Pleader, as may appear to "be an adequate compensation, leaving the remainder to be "recovered from any property that may subsequently be found "to belong to Plaintiff."

Decree 6th Feb. 1822.

N°. 4.

OOTTUMRAM DHOOLUBHRAM.....Appellant,

VERSUS

Mt. DHUNNEE, Widow of KASEERAM, his Son..... } *Respondent.*

Broach Udalut. T. Barnard. *Judge.*

RESPONDENT filed this Suit in the Broach Court on the 14th January 1820 to recover from Appellant, her Father-in-law, the sum of Rupees 1,000 for certain property (being Rupees 400 a Debt; Rupees 250, Respondent's Pulla; Rupees 100, value of 2½ Beeghas of Pusaita land in Ungareshwur; Rupees 100, value of a House; Rupees 75 worth of ornaments; and the same amount of Household Effects) left by Respondent's Mother in deposit with Appellant for her daughter's ultimate benefit when of age. She said that Appellant took her into his house on her Mother's death, but the Court had since obliged him

Claim by Respondent, a Hindoo woman, to recover from her father-in-law certain property left in his charge by her mother for her benefit.

Evidence of a bequest in favor of Re-

him to resign her guardianship to her Uncle Govindram because he ill-treated her. She now sued him through her said Guardian, to give up also the property above specified, as she had no confidence in his honesty, and wished to make use of it by placing it at interest in the hands of some respectable Merchant.

spondent and her husband, both minors, by the mother of Respondent, on which the Zilla Judge awarded so much of the personal property as was proved to have passed into Appellant's hands, to be paid by him for the benefit of the minors, to Respondent's uncle, her guardian under appointment from the Court. Sudur Udalut reversed this decree on the grounds that no proof had been given of receipt of his property by Appella t.

Appellant answered that the claim was totally false, and challenged Respondent to produce either documentary or oral evidence of her claim on any one of the Items.

Bhoolla Bhugga deposed that Mt. Umba, the mother of Respondent, shortly before her death deposited Rupees 407 with witness, and afterwards, taking the money back, made it over to Appellant.

Sheo Dut Gungadas handed up Copy of a List of ornaments and Effects, value Rupees 773, which he drew up by Umba's desire, and the contents of which he saw deposited by her with Appellant. Witness was likewise present when Bhoolla paid Rupees 407 to Appellant at Umba's desire. The original list was he said deposited with one Bhuwanee Shookul, who then deposed that Mt. Umba executed a Deed of Gift of her property to Respondent and her Husband, constituting Appellant the Guardian, and that among this property the Pusaita land at Ungareshwur was specified in the Deed, which was signed by Appellant in acknowledgment, and deposited with witness, but unfortunately destroyed by the falling in of a Wall during the rains.

Appellant had no evidence to produce. With respect to the proof brought by Respondent, the Judge thought that none was given respecting the house, or the mortgaged Pusaita land, but it had been satisfactorily established that Rupees 800 worth of other property was made over to Respondent, and her husband Kaseeram. They being both too young to take charge of the property, Appellant, as Father of Kaseeram, would be the Prochein Ami of Respondent, had not the care of her been intrusted to Govindram, in consequence of Appellant's illtreatment of her. Appellant had, since giving in his answer, admitted that he received the property claimed, but pleaded it was lost in a fire when his house was burned. This

might

might be plausible respecting the furniture, but did not account for the loss of the cash and metals. It was decreed that Appellant should pay, on account of Respondent and her husband, the sum of Rupees 701, to Govindram, on the latter furnishing security to keep it in deposit for them until they came of age.

Court of Appeal.

An appeal was instituted against the above decision, on the ground that Mt. Umba having executed a Deed of Gift of all the property in question to this Appellant's son, the Respondent had no right to sue him. He pleaded however that the Patel of the village had seized the land, and the house was given by the Udalut in payment of a debt, as well as part of the cash besides. The Provincial Court called on the Judge to state the grounds on which he had determined Rupees 800 to be due by Appellant, and to take more satisfactory evidence of the deposit being made on account of both the minors with Appellant. Before a return was made to this reference, the Provincial Court was dissolved, and this suit transferred, with others pending before it, to the file of the Sudur Udalut at Surat.

Sudur Udalut, *Sitting Judge.* J. Sutherland, *2d do.*

The Return by the Broach Zilla Judge shewed that no further evidence was taken, in consequence of Respondent's neglecting to proceed to Broach. In explanation of Rupees 800 being awarded, the Item of Rupees 407, mentioned by Bhoolla and two others in the List of Rupees 152 and 250, value of Furniture, and ornaments, were pointed out by the Judge.

Appellant himself produced the Krishnarpun, or Deed of Gift, dated 11th July 1816, and bearing the Registry of the Udalut, executed by Umba, widow of Madhowram Wujehram, in favor of (Respondent's husband) Kaseeram, son of Oottumram, and of (Respondent,) his Wife Dhunkoonwur, daughter of the Testatrix, making over 2½ Beeghas of Pusaita Land, a House, Household effects, clothes, &c. not valued nor specified, to them and their Heirs for ever.

The Sitting Judge observed that in this Deed no person, whether Appellant or other, was nominated Guardian to the Legatees, and it was resolved to give the precept of the Provincial

Court

Court full effect, by again directing the Judge of Broach to proceed in taking fresh evidence as therein directed. At the same time the Shastrees were asked, who was legal guardian of the young couple, it being admitted, that they were both under twelve years of age?

They answered, As long as Umba's daughter (Respondent) is a minor, her father-in-law is her guardian. When she and her husband are both grown up, she must remain under her husband's care. Being further required to state, in what manner the property now under Appeal was to be managed if Appellant, the father-in-law of Respondent, failed to take proper care of her? they said, So long as the Girl is a minor, her mother's property should be entrusted to some disinterested merchant. When she comes thoroughly to understand worldly affairs, she may demand it all back from him, and taking it into her own charge, live under her husband's orders. The guardianship of a Girl left without father or mother pertains to the King.

The Return handed up the Deposition of two fresh witnesses called by Appellant, who stated that Mt. Umba on her death-bed told them of her having executed the Krishnarpun in favor of Respondent and her Husband, but that they never saw that Deed, nor had Umba specified any effects except the House, Pusaita land, and Household effects generally.

The Sitting Judge remarked that with respect to the first Item of Rupees 800, which the Zilla Court had adjudged Appellant to pay, only one witness was adduced, and he was the same from whom it was alleged to have been received. On such slender proof, without receipt, or other document, the Item could not be admitted. With respect to the other two, they were taken from a list presented by a witness, who alleged that the original, as attested by Appellant on receiving charge of the Property, was deposited with Bhuwanee Shookul, and destroyed by the falling of his wall, and Bhuwanee Shookul had corroborated this. Had the property been delivered to Appellant by Mt. Umba on her death, every degree of security would no doubt

doubt have been had recourse to, making the matter so clear that no doubts could have existed. The strong ground against Appellant, was his acknowledgment shewn on the Judge's Record, but he now denied that it was ever his intention to allude to property not in his possession, and he had spoken with reference to his wife's ornaments destroyed in the fire. It was reasonable to suppose that Mt. Umba would, when stating her affairs to the last witness, have alluded to the rest of the Items sued for, had they really been deposited with Appellant, but she had not done so, and it was to be remarked that the Krishnarpun did not specify them. The third Judge being of opinion that the decree of the Zilla Court should be reversed, submitted the case for the decision of a competent Court.

Competent Court. J. Elphinston, *Chief Judge.* J. Romer, *2d do.* Decree 5th May 1821.

The Court concurring in opinion with the third Judge, reversed the decree of the Zilla Court, and awarded to Appellant all his Costs from Respondent.

No. 5.

DURVESH and Mt. KHULEEJA,..... } *Appellants,*
Heirs of IBRAHIM..... }

VERSUS

SHEKHUN and Mt. FATIMA.....Respondents.

Broach. Udalut, T. Barnard, *Judge.*

THIS Suit was filed in the Zilla Court on the 26th November 1819 by Appellants, Son and daughter of Ibrahim bin Sulloo Ahmud. Hoorjee Buhoo, Ibrahim's Wife, was also a party to the action, but is since dead.

Suit by the son and daughter of an absent Moohummudan to recover his half share of the family Estate from the Widow and son of his Brother. Defence, that the Moohummudan Law did not permit the Heirs of an absentee to claim his Estate from another person in possession, until his

From the Petition it appeared that there were two Brothers, Sulloo and Moosa, Sons of Ahmud; Moosa died childless, leaving one House. Sulloo had two Sons, Ibrahim and Ismael, between whom he left four Houses, worth about Rupees 1,300, besides that left by Moosa, and other Effects undivided. Ismael died leaving Respondents, his Wife and Son. Ibrahim went abroad after his Brother's death, leaving his Wife Hoorjee Buhoo, and Appellants, his Son and daughter, and had never been heard of since. In the year of Famine, Hoorjee Buhoo took her Son, and went to live with her mother at Koosoomba, leaving

leaving all the Property undivided in the hands of Respondent. When of age, Appellant Durvesh demanded his share of their Ancestor's property, which was not divided under various pretences. Respondents having in the mean time disposed of three of the Houses, and the remaining two being likely to share the same fate, they took the only resource left for obtaining their inheritance by suing for their half share of the 5 houses, or Rupees 650 intending to claim the half of the personal property at a future period.

Respondents founded their defence upon the law of their Religion not allowing Appellants to claim the inheritance of Ibrahim until his death, which was still unknown. They at the same time professed their readiness to give Ibrahim his share whenever he appeared to claim it in propriâ personâ.

Appellants replied that full 30 years had elapsed since Ibrahim departed, and having waited as long as they could in expectation of his return, were only now induced to come forward to prevent the remainder of the property from being made away with.

Respondents said Ibrahim was 26 years old when he went away and had been absent 28 years. Appellants declared he was 40 years old when he left, and had been absent nearly 35 years.

Hurree Bhaee Nursee proved the sale of a House by Respondent to his Father for Rupees 151, nine years ago. Moohummud Hussun also proved the sale to him by Respondents of a House a few months before, for Rupees 171. Each witness produced the Deed of Sale of his own house, and Respondents admitted the fact, saying that with the sale Proceeds of the last they paid a debt of Ibrahim, and out of the first Sum they expended Rupees 50 on the Funeral of Buhoojee Mah, the common Grandmother, laying out the rest in repairing the veranda of their own House.

Moohummud

ascertained death.

Zilla Judge declaring the Moohummudan Law silent on the point, allowed Respondents a further period of twenty years to obtain tidings of the absentee before delivery of his share to Appellants.

Moohummudan Law officers of the Sudur Udalut declared 90 years from the time of birth to be allowed to a person in possession of an absentee's Estate, but with power to appoint another administrator if mismanaged.

Sudur Udalut held this to have happened, and put Appellants in possession as next Heirs, and most interested in taking care of the property.

Moohummud Hussun likewise produced another Deed of Sale to him by Respondents of an empty piece of building Ground for Rupees 65. This also was admitted by Respondents, who said the money had been expended in further repairs to their House when damaged by the Earthquake.

One Fuqueera deposed that Respondent formerly sold him the materials of a House.

Dosa Meeyan, a Bricklayer, deposed to the repair of Respondents' House about 4 years before, but could not state the amount laid out by them.

Hussunjee Ibrahimjee specified the property left by the Grandmother at her death, and valued it at Rupees 46, of which about 7 Rupees were expended by Respondents on the last repairs after the Earthquake, and the balance was kept by them.

Moosa Ismael and his brother Yoosoof said that Ibrahim left home one or two years after the Famine in St. 1840 or A. D. 1784, and was then about 28 years of age. The Grandmother was supported from that time until her death, about 9 years ago, by Respondents, with whom she always resided. Her Funeral rites were performed also by them to the amount of Rupees 50; there was a House belonging to Ibrahim and mortgaged by him for Rupees 112, and which Respondents sold to Moohummud, paying off the amount of the mortgage out of the proceeds.

Pooranee, daughter of Umur Sing, produced a Deed of a House sold by Ibrahim to her husband for Rupees 128, in A. S. 1847 or A. D. 1791, and Bhugwan produced a Deed of mortgage executed to him by the same person of a Shop for Rupees 99 in A. S. 1846, which proved that Ibrahim had not been absent above 29 years, but the Houses were not included among those sued for.

The Judge, in summing up, observed that from the sale of the property above specified, and that left by the Grandmother,

Respondents

Respondents had realized Rupees 433, and had still another House left. It was not disputed that this property had descended from Ibrahim and Ismael, of whom the parties were Coheirs, but Respondents had shewn that they had expended Rupees 375 in redeeming the mortgage and paying funeral expenses. The Balance due to the Estate was Rupees 58 and a House, in which the parties were joint Proprietors, or would be, if Ibrahim's death were ascertained, since the Moohummudan Law was silent as to when the Son was to succeed the Father, the later not being heard of. Twenty years were therefore allowed for procuring intelligence of Ibrahim, in default of which half of the above Property was to be made over to Appellants, and Respondents in the interim were either to give security or deliver the Property to Appellants.

Decree 1st Feb. 1820.

This Suit was transferred from the File of the late Court of Appeal on which it stood as No. 788.

Sudur Udalut, *Sitting Judge.* J. Sutherland, *Judge.*

The appeal was laid to set aside the limitation made by the Zilla Court in respect to 20 years, because of the great probability of Ibrahim's death having already taking place, since he had been absent about 30 years, and being 50 years old when he quitted Broach, it left no hopes of his being still alive.

The Sitting Judge observed that as the Zilla Court had recorded no written reference to the Moohummudan Law Officers, on which the Law had been declared silent on the case, it became in the first place material to determine whether Appellants were entitled to claim and take charge of the share belonging to Ibrahim or not.

The Mouluvees of the Court were therefore asked, after an exposition of the case, whether or not the inheritance of Ibrahim might be delivered up to the Appellants without waiting for Ibrahim's return or tidings of him?

They answered, from the Hidayu, " that until the ascertain-
" ed death of Ibrahim, or such a lapse of time as would make
" his

" his age amount to 90 years, the term of a legal existence,
" Appellants, the son and wife (or daughter) were not entitled
" to claim his property, since a person in possession, under those
" circumstances, of the Estate of a lost or missing man, cannot
" be deprived of it until the period have elapsed, unless he be
" making it away, when another person should be appointed for
" properly administering such Estate."

The Sitting Judge observed that there was no doubt that Respondents had made away with a great part of the property in a loose way, without having had sufficient care for the right of the absentee, and in a manner which rendered it improper longer to allow them to retain the charge. The Law thus authorizing a transfer, no persons appeared so fit for the charge as Appellants, the next Heirs. The next point was the property adjudged to belong to the Estate at this day, and on this Head he felt inclined to sustain the decision of the Zilla Judge, given his opinion, that this Decree should be otherwise amended by putting Appellants in possession of a Moiety of the sum of Rupees 58, and of the House, adjudged to be the only property remaining to the Estate. The case was consequently referred to a competent Court. The other Judges concurring in the View of the third Judge, passed a Decree amending that of the Broach Court to the above effect.

Competent Court, J. Elphinston, *Chief Judge.* J. Romer, *2d do.*

N°. 6.

BHUGWAN GOOLABCHUND, on the part of YUSWUDA BAEE, daughter NUNDRAM ANUNDRAM..... } *Appellant,*

VERSUS

KRIPARAM ANUNDRAM and NURBHERAM, Son of BHAEEDAS ANUNDRAM..... } *Respondents.*

Surat Udalut, T. M. Keate, *Judge.*

THIS Suit was filed by Appellant in the Zilla Court on the 19th January 1819 to recover from Respondents the sum of Rupees

pees 800 value of property bequeathed to her by her Mother Premkoonwur in a Will which she made during the prevalence of the Epidemic in A. S. 1873 or A. D. 1817 after deducting the amount set apart by the Testatrix for her funeral ceremonies, which were to be performed by Respondent Kriparam, Appellant's Uncle. She had demanded the property of him, but he put her off saying his Nephew, the other Respondent, had already filed a Suit against him for the same. This was a mere excuse, for Nundram, Kriparam, and Bhaeedas, the three Brothers, used to live separate; and the property in question belonged to neither of the latter but was acquired by her Father, and she now sued both of the Respondents to prove her preferable Title to it under the Will of her mother bequeathing it to herself alone.

Decree 19th Feb. 1820.

Claim by Appellant, a Hindoo Woman of the Bruhm Kshutree Cast, to recover her Father's Estate from one of his Brothers, and the son of a second, on plea of division having been effected, and a Will of her mother in her favor.

Dismissed by the Zilla Judge on the ground that separation never having been effected, Appellant, as a daughter, had no claim, either by Law or Rule of Cast, to share in the Estate. Share awarded by the Register's Court on the same grounds to the Brother's son, after ascertaining the Law of the Shastr and Rules of Cast to be in his favor; affirmed in Appeal by the Zilla Judge.

Sudur Udalut affirmed the Decree against the present Appellant, on failure of proof of separation between the Brothers, thus upholding the principle of the Zilla Decrees.

Respondents answered separately, but rested their defence on the same grounds, viz: that the possession of Nundram's property had already been decided to belong to Respondents jointly, by a decree of the Register's Court in a suit filed by Respondent Nurbheram against the other Respondent Kriparam, and the decision of this present suit was referred by them to the future consideration of the Court when their own suit came on in Appeal before it. Nurbheram at the same time declared the Will to be a Forgery.

Appellant replied that Anundram, the common Ancestor, left no property, either real or personal, and his Funeral expenses were defrayed by money borrowed for the purpose by Nundram. The three Brothers, his Sons, had acquired whatever they were worth by their own exertions, and Bhaeedas had since separated from the two, exchanging Farighkhuts with them, so his son Respondent at least could have no claim to this property.

Kriparam acknowledged in rejoinder that his Father Anundram died worth nothing; that what had been since acquired was by the three Brothers jointly, and that Bhaeedas had separated

rated from the other two, passing to them a regular Deed of separation. He allowed that they all three lived separate, but said the property nevertheless belonged to himself as Nundram's legal Heir.

Nurbheram in his rejoinder explained that the Shastr and Rules of Cast in the case were at variance, and that the latter must be followed in preference to the former. The Shastr did not allow of a Widower, or Widow, marrying again, but in most Casts, and that of the parties in particular, second marriages were common. By the same customs, a Nephew succeeded to the property of an Uncle dying childless, as had been stated in a certificate given by the Cast to Mr. Hockley in their former dispute. With respect to the Will, it would be found from comparison of its date with that of Premkoonwur's death, that it was a Forgery made since her decease. At any rate his own signature was requisite to render it valid, and it neither bore that, nor the attestations of any of the Members of the Cast, except Appellant's particular Friends. He entered likewise upon the other Respondent's claim upon himself, to shew that it was false.

The Court postponed decision of the case, and further proceedings in it, until the Appeal between the Respondents had been determined.

NURBHERAM BHAEEDAS,.....*Plaintiff*,

VERSUS

KRIPARAM ANUNDRAM,.....*Defendant*.

PLAINTIFF filed his Suit on the 11th September 1817 in the Register's Court, to recover from his Uncle, Defendant, the sum of Rupees 300, on account of his half share of the property left by Premkoonwur, the Widow of Nundram, his Uncle and Defendant's Brother, at her death and taken by Defendant, who had promised at a meeting of the Cast to surrender to him this half share, and gave him a List of ornaments and effects belonging

to

to the Estate of the deceased, but without specifying any Cash. A dispute on this arose, and Defendant had since broken his promise, and refused to give up the share.

Defendant answered, that Plaintiff's claim or title to succeed was directly contrary to the Shastr, since Yuswuda Baee (Appellant) the daughter of Nundhram and Heiress of his second Wife Premkoonwur, was then alive, and was the proper person to be sued. He had however himself supported Premkoonwur for 50 years since her husband's death, and at her own death she assigned to him the duty of performing her funeral ceremonies, which he had done out of his own pocket.

From the evidence of those of the Cast called by Plaintiff it appeared that there were four Turs or Sects in the Cast of Bhrum or Ahmudabadkur Kshutrees, called Sindhee, Devur, and Halaee, and the parties in this Suit were of the second. The customs of the different Sect were however as nearly as possible the same. Premkoonwur was the second Wife of Nundram, and Yuswuda, his daughter by a former Wife. By the Rule of the Cast the Brother and Nephew, and not this daughter, were Heirs to Nundram's property descending though his second Wife. There were no examples extant of a special Bequest in favor of a Daughter to the exclusion of the Brother and Nephew, but there were of Daughters being excluded by the Nephew from their Father's inheritance.

The persons called by Defendant said that there was no such positive custom or Rule in the Cast as the Plaintiff's witnesses had stated to exist in favor of the Brother and nephew, and that the daughter ought to inherit. Yuswuda it appeared had a son. They produced three or four Examples of daughters succeeding, (1) the nephew in one of these cases appearing now

(1) It was not asked whether in these examples separation had taken place or not.

now in Court and deposing that he had been deprived of Wittul Kishun his Uncle's inheritance by the daughter of that person.

Three Patels and one hundred and seventy six members of the Cast gave a certificate in favor of Plaintiff, declaring that by the Custom of the Cast, a daughter cannot succeed to the inheritance of her Father in opposition to her Father's Brother and Nephew, whose right is preferable to that of the daughter.

Ninety seven others gave a certificate in Defendant's favor, declaring that there was no established Rule in the Cast upon the point at issue, and that the claim must be decided by the fact of possession in whichever of the three disputants it vested. The direction of the deceased that Defendant should pay her funeral expenses and give the balance to Yuswuda, ought however to supersede every other consideration.

The Shastrees were called upon to say whether, according to the Dhurm Shastr, the right of inheritance in the property of a Widow among the Bhum Kshutrees belonged to her step-daughter, or to the full Brother and Nephew of her late husband?

They answered, if the husband had formerly divided the inheritance of his Father with his Brothers, having equal shares in it with himself, then his daughter would, after the death of her step-mother, succeed to her Father's property. (2) But if the three Brothers had not divided their Father's Estate but remained

(2) By the law of Yagnyuwulkyu, "The wife and the daughters also," quoted in Bombay Cases No 37. It is remarkable, that the Widow's obtaining possession of the Estate, which the suit itself proves she did, clearly demonstrates that her husband had separated from his brothers. Proof of partition therefore being contained in the claim, a decision should have been passed in favor of the daughter founded on the Shastree's declaration. The opinion of the cast would in all probability have been found to agree, if they had been asked whether the custom stated by each applied to a state of Coparcenery or the contrary. My Shastree's quotation from the Mitakshura in the next note is very apposite and clear to the point. The decision of the Zilla Judge in favor of the nephew against the uncle could form no bar to the niece coming in to prove them both to have a bad title, for a decision in favor of the best of two claimants can be no proof that a third party has not a better title than either.

ed a joint Family, then the sole surviving Brother, and the son of the third deceased, are joint Heirs to the property left by the Widow of the second, which forms a portion of the common Estate belonging to all. (3)

The whole of the Cast was then called up, and their opinion taken as to whether the Brother and Nephew, or the Daughter, of the deceased Nundram ought to succeed to his Estate?

One hundred and forty one members voted in favor of the claim of the Brother and Nephew.

Thirty eight were in favor of the daughter's right.

Plaintiff then exhibited a List of the property left by Premkoonwur at her decease valued at Rupees 1,399,-2.

Defendant produced copy of the Will of Premkoonwur, but the Court rejected it as an invalid document, because it had never been registered in the Udalut.

It then decided, that as the majority of the Cast had declared Plaintiff and Defendant to be equally entitled each to half of the property left by the deceased Premkoonwur, Plaintiff's claim was good, and after deducting the funeral expenses from the Estate, half the balance, or the sum sued for, Rupees 300, was decreed to Plaintiff with his Costs of Suit.

The claim by Defendant to reversal of this decision in Appeal was grounded upon an alleged separation between the Brothers, authenticated

Judge's Court in Appeal, No. 464 of 1812.
T. M. Keate, *Judge*.

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(3) Mit. Book second, leaf 58th, page 2d, line 8th, "In case of competition between "brothers and nephews of a man dying without male issue, the nephews have no title to "the succession; for their right of inheritance is declared to be on failure of brothers, by "the law" both parents, brothers likewise, and their sons. "However when a brother has "died leaving no male issue nor other nearer Heir, (meaning the wife, daughters, their sons, "and the parents of the deceased,) and the Estate has consequently devolved on his brothers "indifferently, if any one of them die before a partition of their Brother's Estate takes "place, his sons do in that case acquire a little through their Father; and it is fit therefore "that a share should be allowed to them, in their father's right, at a subsequent distribution "of the property between them and the surviving brothers" Cole. Mit. 348.

Decree 17th Feb. 1820.

authenticated by Deeds of Release. He said moreover that the property of Nundram adjudged to be given up by him, had never been kept, but expended and disposed of according to the directions of the deceased, and he could not be expected to pay it over again.

The Defendant being called upon by the Judge to state why he had not produced in the Register's Court the Releases he mentioned, said in excuse that the fact of separation formed no part of the dispute. The Court thought the whole point turned upon that Question. The answer of the Shastrees rested upon it altogether, and amounted to nothing as to the issue, only because the question was not decided. So much time having since elapsed, and another claimant (the present Appellant) having started up in No. 217 of 1819, with whom Defendant was accused of being in collusion, the Court would not admit evidence at that time to the most important fact, which ought to have been proved two years before. The decree of the Register's Court was therefore affirmed in favor of Plaintiff (Respondent.)

The Court being now able, from determination of the Appeal, to proceed with the original suit laid over, called up the parties and resumed the case.

Appellant proposed to prove it by evidence of a separation of the interests of the three Brothers, and being called upon to produce the same, referred to a Farighkhut in possession of Respondent Kriparam, but did not pretend to have in his own possession any acquittance granted by the two Brothers to the third.

The Court observed there were two objections to this evidence; first, Kriparam could not be called upon to produce evidence against himself as Respondent in the cause.—Secondly, whatever documents of this kind Kriparam might have possessed, he ought to have produced two years ago, when the dispute

on

on the subject of this very inheritance was tried between the two Brothers, the present Respondents, and the question of the right inheritance in this same property having been decided by the Judgment in that cause, afterwards affirmed in Appeal, the Suit of the present Appellant was dismissed, she bearing Costs.

The Appeal stood as No. 790 on the File of the late Provincial Court, which had recorded the proceedings of the lower Court, as above shewn.

Sudur Udalut, Sitting Judge, J. Romer, 2d Judge.

Appellant prayed for a reversal of the Zilla decrees on the grounds of Premkoonwur's Will, and her own right of inheritance to the property of her Father Nundram, under the separation alleged by her to have taken place between him and his two Brothers.

The Sitting Judge observed that the main point was whether the three Brothers, Nundram, Bhaeedas, and Kriparam, were really and bonâ fide separated in all their interests, or not; for if they were, the property of Nundram, according to the Law of the Dhurm Shastr would descend to his daughter, Appellant, whether her Step-mother had made a Will in her favor, or not. If the three Brothers, on the contrary, were not separated in their concerns, the Will would not avail her in opposition to the superior rights of her deceased Father's Brother and Nephew. He did not concur therefore in the objection taken by the Zilla Judge to the production of the Farighkhut in possession of Respondent, Kriparam (he being desirous to exhibit it) for the question of the separation of the Brothers had never yet been determined, and there appeared no just reason why Appellant should be shut out from going into proof on this point, or that Respondent Nurbheram should not have the means of shewing the contrary.

Respondent Kriparam was accordingly permitted to exhibit a Farighkhut, purporting to have been passed on Tuesday 11th Falgoon Vud A. S. 1864 or 22d March 1808, by Bhaeedas,

son

son of Nundram Nagurdas, to Kriparam and Nundram his Brothers, setting forth, that he received from them the value of his third share of a house formerly bought by the three Brothers jointly. The amount equivalent was Rupees 200, for which he declared himself fully satisfied, and to have no further claim against them on account of the House, or its Title Deeds.

Respondent Nurbheeram's Wukeel would not admit the validity of it, urging that even if proved it would only shew a special transaction between the Brothers, but was not proof of a general separation of their interests.

A precept was issued to the Zilla Court to take such evidence as Appellant should adduce of the separation of interests of the three brothers, and of the Farighkhut, Respondent Nurbheeram being allowed to adduce any evidence he might have to bring to the contrary.

From the evidence which the Return to this precept handed up, it appeared that the separation of Bhaeedas from his two Brothers was regularly and fully performed, and that the others continued to reside together after that event. Witnesses however deposed that the Lukana was received by all three separately, and that their Marriage, Funeral, and Household, expenses were quite distinct, though the two Brothers continued to reside together in the same house, after Bhaeedas left them. But none of the witnesses, not even those who had attested the Deed handed up by Kriparam, spoke to their own knowledge of Farighkhuts having been interchanged by the three Brothers with each other, nor did any one speak as having witnessed an actual separation and division of Goods.

The Widow of Bhaeedas and step-mother of Respondent Nurbheeram, who had married again since the death of her former husband, said the three Brothers lived together, but she admitted that Bhaeedas died in a house of his own which was afterwards sold for the benefit of his Creditors.

After

After an attentive consideration of these and the former Proceedings, the Court found, that although the Brothers Nundram, Bhaeedas, and Kirparam were so far disunited, as to receive Cast Invitations and presents separately, yet the proof failed as to their carrying on distinct concerns, or having divided among them any family property. The Farighkut also related to a single and special transaction regarding a House, which appeared to have been purchased by the three Brothers jointly. The Appellant being unable to establish the separation of rights among the three Brothers, and the division of inherited property, the Court decreed, that the Appellant's right of inheritance to the property of her deceased Father in preference to his surviving Brother and Nephew, had not, according to the Law of the Dhurm Shastr, been proved, and the decree of the Zilla Judge dismissing her claim to such inheritance, was affirmed with Costs.

Decree 3d April 1821.

N°. 7.

Mr. HUMEEDOON NISA on the part of her Husband MOOHUMMUD SUYUD CHOWDREE,..... } *Appellant,*

VERSUS

GHOOLAM MOHEEOOD DEEN CHOWDREE,..... } *Respondent.*

THIS Suit was filed by Appellant's husband in the Thana Court on the 5th June 1819, and on his death soon after the Court allowed it to be carried on by the present Appellant, under the opinion of the Moohummudan Law Officers, that the Widow, who had a son then living of the age of three years, was competent so to do.

North Konkan Udalut. S. Babington *Judge*

Claim by the Illegitimate son of a Moohummdan for his Father's sixt share of the Hereditary office of Chowdree of

The plaint set forth that the deceased, as Chowdree of the Prants

the Kulyan Prant.

Pleaded in defence that an illegitimate son had no Title, to Succeed to such office.

Custom of the country proved to be against the claim. Moohummudan Law recognized no Hereditary office, but considered all "property" as "Effects."

Zilla Judge dismissed the claim as contrary to the custom of the country.

Decree affirmed by the Sudur Udalut.

Prants of Kulyan and Bhioodee, and Udheekaree and Koolkurnee of Turuf Shere, was entitled to a certain share or proportion of the emoluments of those Offices, which were Wuttun or Hereditary. Half of the whole Wuttun was conceded to belong to Respondent as his exclusive right, and in the remaining half there were three shareholders, Appellant, and two others, one of whom always managed their half of the Wuttun up to the year (1) Subba Ashur Miyaten wu Uluf 1217 Shoohoorsunnu

(1) The years of this Æra, named Shoohoorsunnu, are formed from the names of the Arabic numbers, and having been introduced by the Moohummudans, are known in the Dukhun and Konkuns, under the name of Arubee Sal. It is the year of account in the Konkuns, and there all accounts, Deeds, &c. are dated with it, and often in the Dukhun particularly in Deeds of all descriptions. It commences with the Malabar rains the same as the Mrig Sal or rainy year, and may therefore be said to have been instituted in June A. D. 600 which makes its dates easily reducible into the English one by adding 600 years to them. Explanation.

CENTURIES.

Uluff	1000 years.
Miyat wu uluf	1100 do.
Miyatain wu uluf	1200 do.

UNITS.

Thide	1
Isne	2
Sullasu	3
Arba	4
Khumsu	5
Sittu	6
Subba	7
Summan	8
Tissa	9

THE TENS

Are, with the exception of the two first, formed from the units, as we form our's in English—like

Twenty from	Two
Forty	Four
Fifty	Five, &c.

Thus,

Ashur	10
Ashreen	20
Sullasain	30
Artaeen	40
Khumsueen	50
Sittueen	60
Subbaeen	70
Summaneen	80
Tissaeen	90

They, in writing down a date, place the unit before the ten, (as we say five and twenty, seven and thirty;) and the century after all, but this is sometimes omitted, in the same manner as we say "the year ninty nine."—Examples will be found in the Reports.

hoorsunnu or A. D. 1817, receiving in person the Proceeds of the Huqs from the Government, but since the Establishment of the Company's Government Respondent had, without any power in writing from Appellant and his Brethren, received the Proceeds of their half from the Collector's Treasury. Appellant's Father's proportion of the Wuttun was one sixth, and Respondent had paid Rupees 300 as Appellant's Father's Ghoolam Alee Chowdree's profits, including his share of Inam in the Village of Ranjunowlee. Appellant complained that this was done without any account or due attention to the proportionate shares, and that his two Sisters had received more than they were entitled to. The present suit was filed on the amount of Rupees 601 value of Appellant's and his Sisters' share of the whole Wuttun.

Respondent, who styled himself Chowdree of the Kulyan and Bhioondee Prants and Sur Deshmookh of the Konkun, answered that Appellant being a Bastard Son, had no right or Title to share in the half of the Wuttun. He admitted that there were three sharers in this half. Appellant's Father Ghoolam Alee; Fureed ood Deen Muhmood; and Moohummud Faizoolla. Ghoolam Alee left two other Sons, who had both died since their Father, but their relations were still existing in the Province of Arcot. Ghoolam Alee kept three slave women, two of whom bore him a Son each, and the third a daughter. The daughter and one of these Sons had since died, and Appellant was the other. The latter had never received any share of the Wuttun, nor had a Bastard Son ever succeeded to any inheritance from the most remote times. Respondent's own Grandfather left a natural Son, named Uzm ood Deen; and Moohummud Ubdoolla Chowdree had likewise two natural Sons, who now resided at Nander, but no one of them had to this day received any portion of the inheritance. In the year Subba Tissaeen Miyat wu Ulaf 1197 Shoohoorsunnu or A. D. 1797, Moohummud Ubdoolla, Second Cousin of Appellant's Father, and who was a sharer in half of the Office, had out of enmity set up Appellant to prefer this claim before the Poona Durbar, but it

was

was thrown out as would appear from the papers relating to it, in his, Respondent's, possession. The Female line had never been entitled to inherit since the office came into the Family. With respect to the other Sisters alluded to by Appellant, they were borne to Ghoolam Alee in lawful wedlock, and upon them Appellant could have no just claim. The share belonging to Ghoolam Alee's Family had been managed in his name by his Widow and daughter-in-law from his death up to the year Sittu Miyaten wu Uluf, who maintained themselves and paid the overplus in discharge of certain debts due by the Family. Since their death, Respondent had managed their share, providing out of the proceeds for the maintenance of Ghoolam Alee's daughters, his kept mistress, and her son, the Appellant, and other persons of his Family, but he was not bound to account for his management at the call of an illegitimate son, though he expressed himself ready to render it to the other members of the Family residing at Arcot. The office of Chowdree had been originally conferred upon Aleejee and Ibrahimjee, of whom the latter was Appellant's, and the former Respondent's, Father's Great Grandfather, in compensation for a debt due to them by the King of Dehlee, and had descended without intermission through the legitimate male line, without one instance of an illegitimate child having succeeded to a share.

Appellant in reply did not deny that he was an illegitimate son, but said that after Ghoolam Alee's death, Moohummud Ubdoolla Chowdree managed the third share of the deceased, paying his debts with what remained after the maintenance of the elder Wife and the family was provided for. Appellant declared that the share was for three years managed in his name until Respondent interfered, when the dispute was carried to Poona, and Respondent having then represented to the other members of the Family, there present, that the admission of this Appellant's claim would raise up against the Estate the other natural children in the Family likewise, the Relations

were

were induced to allow an award to be made throwing out Appellant's claim. The Court here recorded its views of this case. The Wuttun was supposed to be divided into two equal shares, one half of which was by Appellant admitted to belong to Respondent; the other was to be divided into three equal shares, one of which fell to Ghoolam Alee Chowdree, and was through him to descend to his Heirs, viz: two legitimate daughters, and one illegitimate son, Appellant, in such proportions as the law might direct.

Appellant in support of his claim produced a note from his First Cousin Mynood Deen Alee, dated 27th Rujub 1197 Shoohoorsunnu or A. D. 1797 inviting people to the Wedding of Appellant, whom he therein styled Chowdree and Udheekarec, but also specified that he was an illegitimate Son.

A letter from Ubbas Alee Chowdree, Brother of Moohummud Ubdoolla, dated 24th Zilkad Tissa Tissaeen 1199 or A. D. 1799 himself calling him Brother and Chowdree.

An account of the expenses of his marriage, in which he was styled Chowdree, and which shewed that the Agents of the Family in the districts gave him Nuzzur on that occasion. Accounts for the years 1211, 1212, and 1213, Hijree or A. D. 1796, 7, and 8, of the management of Appellant's third share of the Wuttun, kept in his name.

A Farighkhut or Deed of Release executed on the 2d Suffur 1721 of Salivahan or A. D. 1800, by Balajee Bapoojee Khure a Creditor of the Family to Mynood Deen Alee; Hoossain Alee; and Appellant, acknowledging receipt of their Huqs or Dues, in liquidation of his demands on them. A Kurar namu, or agreement executed on the 26th Shaban A. H. 1227 or 3d September 1812 by Myn-ood-Deen Chowdree to Shureef Shahib Chowdree, respecting their half of the Family Wuttun, which was delivered up to the latter's management, he agreeing to pay out of the Proceeds what was allotted to the Creditors,

Creditors, and to divide the balance in the regular proportions among the members of the Family of Ghoolam Alee.

An Account from the Collector's Office of the Receipts from it in the official year 1817-18 on Account the Chowdree's Huq of 2 per Cent on the Land Revenues and Huq on the Customs; of the Huq as Udheekaree and Koolkurnee of Turuf Shere and half of the Inam of Ranjunowlee. The payments were,

Rupees 4,541-0-70 Huq of 2 per Cent.

202-2-36	Deshmookh's Huq.	Zumeendar's Huqs.
135-0-34	Koolkurne's Huq.	
263-0-75	Ghoolam Alee Chowdree's half of the Ranjunowlee Inam.	
988-3-28½	On account Land and Sea Customs.	
6,130-3-4S½		

He next exhibited a genealogical Tree shewing the Descent of the Family from the original Grantees of these Offices, but the fact of Descent was not the point in dispute.

The Muhalkuree of the Sonala Turuf, in which the village of Ranjunowlee is situated, deposed that half that village was held in Inam under the name of Fureed-ood-Deen, Great Grandson of Ibraheemjee, and the other half was held by the Government. The Inam was in the name of Fureed-ood-Deen, and by this name it was always known by the Zumeendars, but the letters addressed to him on the subject by the Chowdree as Inamdar, were in the name of Respondent.

Trimbuk Rao Rughoonath Luvhate, an old servant under the Kulyan Moamlutdars, stated that the Chowdreeship was at first for some years conducted jointly by Ubdoolla Sahib and Respondent. Afterwards Shureef Alee, Respondent, and Khan Sahib used to come alternately, but the Government Books made no mention of their management, whether it was joint or not.

not. The names of Respondent and of Fureed-ood-Deen were therein noted. Shureef Alee managed the half of the Inam Village, as well as the Udheekar and Koolkurn of Shere, whilst Respondent conducted the affairs of Buhare Purgunna. Respondent received the honors paid to the Head of the Chowdree's Family by the Government, and all orders were issued in his name. The Government did not distinguish all the Shareholders, but no Government authority ever had received Nuzzurs from illegitimate children nor ever would. The Wuttun in dispute was subject to all the Laws in force respecting immoveable property, and for Wuttun as well as for Zumeendar's Huqs service was liable to be demanded by the Government.

Wasdeo Muhadeo, a Moamlutdar of the Prants Kulyan and Nezul for two years under Sudaseo Keshow, for two years in his own name, and then for two years under Khunde Rao Rastea, deposed that Ghoolam Uhmud, Respondent's Father, as Head of the Chowdree's Family, and Ghoolam Alee as the next Heir, used to pay the usual Nuzzur, and to take precedence, and the accounts were kept in their names. After their death, Respondent and Moohummud Ubdoolla succeeded to their situations, and when the latter died, Myn-ood-Deen Ulee succeeded him, after whom came his son Fureed-ood-Deen Moohummud. Respondent was head of the Family. Nuzzur was never received from illegitimate Children. In disputes between Moossulmans during the Brahmun Government respecting Zumeendarees, the Custom of the country was always followed in preference to the Moohummudan Law, but they were left at liberty to settle matters as they liked in their own Families or in private disputes. Government merely looked to the Heads of Families, and never concerned itself about Heirs in the Female line, or others. Illegitimate children were never thought of. Witness had held the Moamlut of the Chowdree's Wuttuns in the Muhals dependent upon Lohogurh and Issapoor in the Dukhun, but never heard the slightest mention

tion made of illegitimate Children possessing any Rights. During the administration of Nana Furnavees, and the first five or six years of Bajee Rao's reign, any Officer of Government who put an illegitimate Child in possession of any Wuttun, would have been severely punished, but abuses had since crept into the administration of affairs. Witness believed that the Family obtained the Wuttun originally from the Moghul Government under the title of Sur Deshmookh, with a Huq of 10 per Cent upon the collections, which Huq upon Seevajee being appointed by that Government to the Office, was diminished to 2 per Cent, and their title was changed to Chowdree. One quarter per Cent more was cut off from this when Trimbuk Vinaik came to fix the Jummalamdee, or assessment, of the district, and at this rate he believed it had since remained.

Appellant produced an order dated 21st Jamadee ool Uvvul A. H. 1200 from the Peshwa to Wamnajee Huree Murhatta the Moamlutdar, to attach the Wuttun, and send the parties to Poona.

Meer Shumsood Deen corroborated Respondent's account of the Family, and declared that he never had heard that any of the illegitimate Children of the Family received more than a maintenance. The management of the Wuttun he agreed was for three years held by Moohummud Ubdoolla in the Appellant's name.

Fureed-ood-Deen, son of Myn-ood-Deen, deposed that the division, as now subsisting, of the Wuttun &c. had existed for 200 years. Respondent was Representative of the Eldest, and witness of the Younger, Branch, and they stood thus in the Government Books, but Respondent had managed the whole Wuttun as Head of the Family, and he believed gave every one his due. It was not usual in the Family for illegitimate Children to receive a share, but he had heard Appellant's sister promise him part of what she was to receive for Ghoolam Alee's share, which was paid to the daughters. This claim was also

formerly

formerly preferred by Appellant, but not admitted. Witness avowed his intention of himself demanding from Respondent an account of management of Ghoolam Alee's share as his Heir, in the event of his relations at Arcot not making their appearance.

Pilajee Moorad, whose family had acted as Goomashtas for the Family in the management of the Chowdree Wuttun for 150 years, and who had himself held it for 45 years. gave an Account of the shares belonging to each member of the Family, and then stated that the two legitimate daughters, and the two illegitimate Sons, of Ghoolam Alee since his death had received the balance of his share allotted by the agreement, after payment of debts and expences for their maintenance, and no more. Appellant had never openly managed the share of his Father, but held it in the family for three years. In fact the whole Wuttun was still entire, as no actual division had ever taken place. This witness also declared that the Chowdree Wuttun had been always regulated by the Moohummudan Law, and as far as his observation went, it had never been customary to give illegitimate children more than a maintenance. Bapoojee Bullal Dhoroo, the possessor of a huq called Dhooroopun upon the customs, deposed that the Wuttun of the Chowdree was not regulated by the Moohummudan Law, and that he had never heard of illegitimate sons obtaining a share of inheritance or Wuttun.

Uzeemood Deen, natural Son of Respondent's Grandfather Ghoolam Mohee ood Deen, declared that he himself had received Rupees 150 annually from the Estate, but got no share, and that no illegitimate son like himself had ever received a share, or claimed one, except Appellant. The latter was maintained by his Sisters. It was Moohummud Ubdoolla who set the dispute on foot. Respondent then exhibited several papers for the purpose of further proving that the illegitimate Children of the Family were not entitled to any share of the Wuttun. They were letters between the authorities at Poona and those of Kul-

yan

yan Prant, explaining the state of the dispute, but no decision was found among them, though there were Security Bonds entered into to oblige the parties to abide by the decision of a Punchayut in their case.

The Court then asked the Moohummudan Law Officer, whether the illegitimate Son of a person deceased, who left two legitimate daughters, would be entitled to a share of the Family Wuttun as well as the daughters, or not; and if he were entitled to a share, to what proportion of the whole? They answered, The Moohummudan Law neither recognizes nor mentions such property as Wuttun. All property, whether Wuttun or not, must be classed under the term Turuka, which means "Effects left by a person deceased." This property must be divided among the Heirs according to the Law of God. The Question states that the deceased left two legitimate daughters and one illegitimate Son. By the Law of God, a Son is to receive a share double that of a daughter; wherefore in this case, the property being divided into four shares, the son shall receive two shares, and the daughters one share each.

The Court observed that if the emoluments of the Appointment of Chowdree, Udheekaree, and Koolkurnee, were to be viewed strictly as "Effects" and subject to the Laws which regulate the disposal of property to Heirs amongst Moohummudans, there could be little doubt that the claim of Appellant would be well grounded. But it admitted of doubt whether the emoluments were of that description, and also, whether the customary Rule of the country, directed by Section 14th Regulation 2d of 1800, to operate in certain circumstances to the exclusion of the written Law, was not at variance with Appellant's demand. The appointment of Chowdree seemed to have been of Moohummudan origin, but to have changed its nature completely since the Establishment of the Muharatta Government. Those of Udheekaree and Koolkurnee were purely Hindoo. For many years also, little or no respect had

had been paid to the Laws of the Moohummudans, and people had until the recent change of Government, ceased to expect that they would be applied to disputes. The offspring of kept mistresses, whether in Hindoo or Moohummudan Families, appeared to have been considered as excluded from any share in the Wuttun, and had been only thought entitled to a maintenance. If then the Court were to uphold the Moohummudan Law in this instance, it would be an innovation, and would disturb the channels through which property of this description had flowed in every Moohummudan Family in the district, and its effects would be to render these hereditary Offices less efficient than they at present were, by parcelling out the emoluments of them among the different members of a Family. They would be still further subdivided, and hardly any one person would be sufficiently well paid to ensure an active discharge of his duties. For these reasons the Court determined to refuse the Appellant's claim to any thing more than a maintenance, from the emoluments of the appointments of Chowdree, Udheekaree, and Koolkurnee. The claim to a share of the Inam village of Ranjunowlee might be better grounded, but further proof was requisite on the subject, and respecting the share of it to which Appellant was entitled he was declared at liberty to file a new suit for the Inam, and his present suit was dismissed with Costs.

Decree 8th April 1820.

The Appeal was filed in the Court of Appeal as No. 794, and transferred to the Sudur Udalut File.

Sudur Udalut, *Sitting Judge*, J. Sutherland, *Third Judge*.

The Pleadings were upon the same points brought forward in the lower Court, and no further evidence was adduced on either side. Appellant went into a detail of the matter handed up by the lower Court, commenting upon it very fully, but did not offer to shake any of the leading facts of the case. Her main grounds for appealing were, that the case should have been decided by the principles of Moohummudan Law, and that even the custom of the country did not warrant the exclusion of illegitimate offspring. The

The Court demanded of Appellant's Wukeel how many years Goolam Alee had been dead and what was the age of Moohummud Suyud, when he died. This information he was unable to afford, and the Respondent being then called upon stated that 32 years had elapsed since the death of Ghoolam Alee, and that Appellant's husband Moohummud Suyud, died at the age of 45. This of itself shewed that if the latter had good grounds for his claim, he would not have permitted it to lie dormant so long. The Court therefore, after adverting to the fact that the officers in dispute were partly of Moossulman and partly Hindoo origin, and that the Konkun had been long freed from Moohummudan Rule, since which the Law that regulated these matters in former times had fallen into disuse, and given place to the Customs of the Hindoos, observed, that the evidence in the lower Court shewed that the succesion to such property as that in dispute, in the Konkun, was confined to legitimate offspring, and the application of this Rule by the lower Court in preference to the Moohummudan Law was what was intended by the Regulations. The Zilla Judge's decision, which dismissed Appellant's claim to share in the offices of Chowdree, Udheekaree, and Koolkurnee, but reserved her right to sue for the Inam in Ranjunowlee, was fully affirmed, Appellant bearing Costs.

Decree 21st Feb. 1821.

N°. 8.

RANA UBHEE SINGH DEEP SINGH RAJA,.. ..... } *APPELLANT,*

VERSUS

THE COLLECTOR OF BROACH,.....RESPONDENT.

THE Respondent filed a Suit in the Zilla Court on the 9th August 1819 to oblige Appellant, the Zumeendar of Amod Purgunna,

Broach Udalut, T. Barnard, *Judge.*

, Purgunna, to pay the sum of Rupees 3,000, Amount of Peshkush or Tribute due by him every third year to the Government, and paid accordingly in A. S. 1872, or A. D. 1816, to the Peshwa's Sursooba on the part of that Government, to whom the Purgunna then belonged, but came into the hands of the Honorable Company in A. S. 1873 or A. D. 1817. The Peshkush being now for the first time due from Appellant, he had been called upon to pay it, but refusing, this Suit was brought to compel him. The full Amount due was Rupees 3,300 but deduction of Rupees 300 was allowed as usual for Inam and Sur Pao.

Suit by the Honorable Company to recover the triennial Peshkush due by Appellant the Thakoor or Zumeendar, of Amode in the Zilla of Broach.

Resisted on plea that the exaction of it by the late Government was an act of oppression unsanctioned by Custom, and no Right to it existed.

Right of Government upheld on proof of payment to the former Government of the Peshkush by Appellant.

Appellant answered, that from the earliest times it was not customary to pay Peshkush to the Peshwa's Government, and that when the Purgunna was made over to the Company in A. S. 1863 or A. D. 1807, and during the five years that they then held it, nothing in the shape of Peshkush was paid by him above the ancient dues. Afterwards, when the Purgunna was farmed out, the Komashdar by force, and without regard to ancient customs, extorted Peshkush, which must therefore be considered an unfounded and unauthorized exaction. It was useless to attempt to obtain redress from the Peshwa, who never listened to representations, nor gave justice, in such cases. The Komashdar might take a hundred Rupees from any Ruyut of the place under pretence of a fine, and Appellant might do the same, but the exactions of such fine constituted no right on the part of the Komashdar to levy it again—The claim, it was urged, was in this view quite unfounded, and must be dismissed.

Respondent in reply said that the excuse of violence having been used by the Komashdar had nothing to do with the present claim, which was founded upon the Peshkush having been levied of old by the Peshwa's Sursooba, and being notorious to all the world.

Krishnajee Lukshumun, a Karkoon of the Furnavees in A. S. 1860

1860 or A. D. 1804, deposed that a Sursooba did not constantly reside in the Purgunnas of Jumboosur and Amod, but in that and the following year the Sursooba, Khunde Rao Rastia, came to Amod. In 1862 Vinaik Rao Gunput (Putwurdhun) came as Sursooba. Witness deposed that Appellent used to pay 3,300, as Peshkush, to the Sursooba, and Man Singh Raja of Kherwara paid Rupees 2,200 on the same account. The odd hundreds were deducted in the Government accounts as Sur Pao. The offices of Komashdar and Sursooba were one and the same. In 1862 they were united, and afterwards Wittul Punt (Mama) held both offices for the Jumboosur Purgunna till 1870. After that, Dajee Moorar held both offices. The Peshkush was placed among the rest of the collections, and the balance sent to the Government, after deductions for Expenses. Krishnajee Punt Fatuk received the Peshkush in 1863, Wittul Punt Mama took it in 1869, and in 1872 Prubhakur Anund. The witness referred for proof of this to the Muzmooadar's Dufturs for those years. It would not be found probably in the Government accounts, as the Muhals and Purgunnas being farmed out, Government troubled itself with no Heads of account, except one for each Farmer or each Muhal.

Hurkaee Poorshotum and Nursiopn Trimbuklal, Dessaees of Kusba Amod, deposed to Appellant's paying the Peshkush, which was of old standing, and had certainly been paid by him in 1872 to Prubhakur Punt, and that it also had been paid during the time the Honorable Company had possession of Jumboosur formerly.

Appellant had nothing to adduce against this, except the charge of Troops having been on various occasions employed by the Komashdar to extort the money from him.

Respondent produced an Extract from the Sursooba accounts for the year 1203, Shoohoorsunnu, or A. D. 1803, in which Appellant and Man Singh were credited with payment of Rupees 3,000, and 2,000, respectively, on account of Peshkush.

He

He also procured the original Sursooba Dufturs for the years A. S. 1860 ad 63, or A. D. 1804, to 1807, from the Bombay Government, and the payment of Peshkush during that time by Appellant was clearly proved by these Documents.

A decision was thereupon given against Appellant for payment of the Peshkush and Costs. Decree 3d April 1820.

When this Suit, which stood as No. 796, on the File of the late Provincial Court, came on for hearing in the Sudur Udalut, the Court went through the pleadings in Appeal, and found that Appellant's objections were the same that he had urged in his defence in the Zilla Court. The Court thought that to enable Appellant to invalidate the claim made on the part of the Collector against him, it would be material for him to shew in opposition to the evidence adduced on the part of the Respondent, that the demand was illegal and unauthorised. Now the extract from the Sursooba's Books for the year Shoohoorsunnu 1203, clearly established that a payment of the Peshkush sued for was brought on the Duftur of the Sursooba of Amod, and was no doubt duly accounted for by him to the ruling Power. Appellant produced no proof, not denying the existence of the claim, but alleging that it was an undue exaction, made during the Peshwa's Government, which ought not to be continued by the Honorable Company's. This the Court said was a point on which it had no discretion to exercise, the question before it being, whether this sum, or Peshkush, formed part of the Revenue due to the State, or was a sum illegally extorted by the rapacity of the Amildars for their own private benefit or use. The Court was of opinion that Respondent had made out his case, of the Peshkush sued for being due to the State by the Appellant, who was therefore adjudged liable to pay it, and the Decree of the Zilla Court, awarding it against him was affirmed with Costs. Sudur Udalut, *Sitting Judge*, J. Elphinston, *Chief Judge*. Decree 14th Feb. 1821.

Note. Raja Man Singh, Zumeendar of Kherwara, who had filed an Appeal No. 27, from a similar decision in favor of the Broach

Broach Collector against him for Peshkush in the sum of Rupess 2,000, allowed his Appeal to be struck off the File for default in the Sudur Udalut.

N°. 9.

*JUGJEEVUNDAS GOKOOLDASS,.....*APPELLANT,

VERSUS

MOOHUMMUD BHAEE UBDOOLLA BHAEE..... RESPONDENT.

Surat Udalut, No. 4209 of 1819. W. A. Jones, *Acting Judge*.

In the matter of an ex-parte Decree in which the Zilla Judge, having in view other claims on defendant, confined execution of it to any property of Defendant with the exception of certain effects specified, the Sudur Udalut ruled, that the restriction be removed and the Decree made general, leaving disputes for priority of execution or other cause to be tried in the usual manner.

APPELLANT filed this Suit in the Surat Court on the 21st December 1819, to recover from Respondent the sum of Rupees 755-1-0 balance principal and interest of an account Current of A. S. 1874 or A. D. 1818. The Respondent suffered judgment to go by default, and Appellant moved the Court, on the 11th April 1820 to attach, on his account, some Cash deposited by Respondent with the house of Samul Behchur, since no one had appeared on Respondent's part, and because, since filing this Suit, Lukmeedas Laldas had filed one No. 4352, against the same Respondent. Appellant prayed that his priority of demand being considered, he might have a decision first passed in his cause, and get this property of Respondent which he had pointed out, awarded in liquidation of his demand. The Court directed that both the Suits should be brought on at the same time, and an order was given to Samul Behchur's House, to keep the Cash in deposit until Appellant's demand were satisfied. Appellant being called on, in the absence of any defence, to prove his case to the satisfaction of the Court, exhibited his account for the year 1874, on which he sued, and called two witnesses, Bhookundas Boolakheedas, and the Mooneem, or Head, Goomashta of Uveechul Juvehur's Firm, named Nihalchuud Nuthoo, who respectively proved, that Appellant in Asvin

vin A. S. 1874, October 1818, presented a Bill of Exchange for Rupees 1,000 at 12 per Cent in the name of Respondent upon that Firm, and that Appellant received payment of it himself, and paid the amount to Respondent at Ahmudabad through Bhookundas.

The Court's decree was as follows, that Appellant should be paid the amount of his Suit with Costs from any property of the Respondent which might be discovered, with the exception of the money lodged with the Firm of Samul Behchur, and the cloths received from the house of one Poorshotum Dhobee. Appellant to bear costs in the mean time.

Decree 19th June 1820.

The Appellant applied for reversal of this Judgment to the Provincial Court, on whose File the Appeal was admitted as No. 799, and transferred to that of the

Sudur Udalut, *Sitting Judge.* J. Sutherland, *Third Judge.*

The ground for Appealing was the injustice of awarding to Lukmeedas Laldas, the property in Samul Behchur's hands, which Appellant had attached as belonging to Respondent, against whom, as he had filed a Suit before that of the said Lukmeedas, he became entitled by the practice of the Courts, to priority of Execution. Respondent still allowed the case to proceed ex-parte as in the lower Court.

The Sitting Judge was at a loss to discover from the Record, on what grounds the acting Zilla Judge had introduced that clause in his Decree which prevented Appellant from having execution on the only property within his jurisdiction that had been discovered to belong to Respondent. As Appellant had very properly brought his action in the first instance against the property generally of Respondent, who had disappeared, the Decree should have run in the very same manner. This would have left the question relative to the property under Appellant's attachment, to be disposed of in the regular course on execution of the Decree. The party to whom preference had been given had no case before the Court; consequently, at this stage of the

Proceedings,

Proceedings, there was no way to ascertain to whom the preference was justly due, nor was it proper then to dispose of a question which could only be considered after Judgment. All the relief which this Court could grant to Appellant, was to place him on a footing of equality with all others, by amending the decision of the acting Judge, so far as to remove the restriction imposed by him on Appellant, who would then be able to try his right to priority of Judgment in any way that might appear to him most advisable. The sitting Judge being thus of opinion that the acting Judge's Decree ought to be amended, referred the case to a competent Court for that purpose.

Competent Court.
J. Elphinston, *Chief Judge.*
J. Romer, *2d do.*

The Chief and second Judges concurring in the opinion above expressed by the Third Judge, "determined to amend so much "of the Decree passed by the Acting Zilla Judge as barred the "Appellant from satisfaction of his demand out of the sum of "money lodged in the house of Samul Behchur, and certain "articles of cloths received from Poorshotum Dhobee, which "exceptions were accordingly removed, Costs being borne by "Appellant in the first instance, but recoverable from Respon-"dent, or his property, as provided for in the lower Court's De-"cree."

Decree 1st March 1821.

On the 30th March 1821 the Zilla Judge, Mr. Kentish, addressed the Court respecting the difficulty he felt in carrying this Decree into execution, from there having been two Judgments passed in this matter in the Udalut, only one of which had been certified in Appeal, and the Decree passed upon which Appeal appeared to have the effect of reversing in part the decision on that Plaint which had not been before the Superior Court. The principal doubt entertained was whether the removal of the obstacles to the decree in Appeal, was meant to preclude the Plaintiff in the other suit from sharing with the Plaintiff in Error, the amount of the monies deposited in the house of Samul Behchur, provided an equal degree of diligence was found to have been evinced by the parties. The Judge explained

plained that the Plaintiff in No. 4352, previous to the Institution of either suit, had moved the Court to obstruct the property, and an order was passed directing an answer to be put in, but in the interim Appellant filed his suit No. 4209, and made a motion to the same effect a few days after the institution of this suit. Plaintiff in the other suit No. 4352, who perhaps if not in strictness of Law, yet still in equity, might be considered the first and aboriginal Plaintiff, likewise filed his action, and repeated his former motion, when the like orders were issued. Judgment was passed on both cases on the same day, and under these circumstances it was submitted for the consideration of the Sudur Udalut, " whether, in case the Zilla Court should be of " opinion that the Plaintiff in No. 4352, had made good his " right to share, in common with the Appellant, the money de- " posited in the house of Samul Behchur, the Decree passed in " Appeal was to be considered as a Bar to an equal distribution " of the property in question between the two Judgment Cre- " ditors of the Insolvent Defendant (Respondent?) and whe- " ther the Plaintiff in No. 4352, was to be called upon to re- " fund the whole of the amount awarded to him in execution " of the Decree passed in his favor under date the 19th June " 1820?"

The Sudur Udalut in answer observed that the Court at the time of passing their Decree, were perfectly well aware of the nature of the cause, and carefully refrained from interference with any other, intending that the Question of Execution should remain open to take its course in the usual manner.

No. 10.

No. 10.

JAEERAM SUDASEO SARUNGDHUR,....Appellant,

VERSUS

LUKSHUMUN RUGHOO Shet SARUNGDHUR..... } *Respondent.*

North Konkun Udalut, S. Babington, *Judge.*

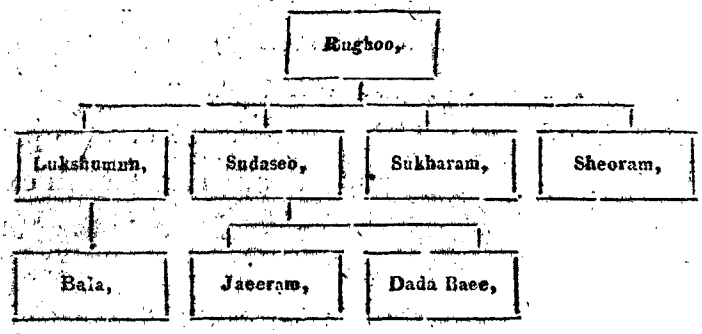
ON the 13th June 1819, a Suit was filed by Respondent, against Appellant with Ruza Fureed and his Son Moohummud Mohee-ood-Deen, to recover from them Rupees 795, as his share of their Partnership dealings.

Respondent one of four Hindoo Brothers sued as a member of the united family for his share of the Profits of a firm composed of one Brother's son and Moohummudan Partners. Decree in Respondent's favor against his Nephew on the concurrent authority of the custom of the country and Hindoo Law, that all the Members of an united Family share all profits equally.

Claim against the other Partners disallowed as not bound by Hindoo Laws or customs.

Affirmed by the Sudur Udalut.

From Respondent's statement in the lower Court, it appeared that he was the eldest of four Brothers, members of a joint family, living at Kulyan.



in which state they remained till 1737, of Salivahan or A. D. 1815. Their father had no property of his own, but Respondent, his Eldest son, began when about 16 years old, to trade as a Grain Merchant in a small way, and accumulating some capital, bought and built houses, purchased cattle, married his three Brothers and their children after them, set up the family and maintained them all. In 1725, A. D. 1803, his son Bala set up a copper change stall in front of Respondent's shop, with his cousin Jaeeram, the Appellant, and made about a Rupee per diem. The other Defendant Ruzá Fureed proposed to Respondent's Brother Sheoram to take him as an equal partner into this concern, urging that the increase of capital would enable them

to

to negotiate Bills and do business as Suraffs, or Bankers. Sheo-ram mentioned it again to Respondent, and it was agreed that a Firm should be set up, in the name of Ruza Fureed's son, Moohummúd Mohee-ood-Deen, then about 4 years old, and of Respondent's Nephew Jaeeram, Appellant, who was about 13 years old, and was selected from the family as a lucky man by the village astrologer. Respondent's son Bala drew out the Deed of partnership in their names, and the new Firm commenced its dealings on the old spot in front of the shop. Their Bills however were soon dishonored and their credit was shaking, when Respondent went to Bombay, and exerting himself to assist them, kept the Firm up till the month of Vyshak, 1737, or May 1815, when Ruza Fureed prevailed on Appellant Jaeeram to separate, and leave the Family. Respondent conceiving himself entitled thereto demanded an account of the Dealings of Appellant's Firm, and sued for what he believed might be the value of his own share, as member of the joint Family by which it was set up until the separation.

Appellant and his partners pleaded that Respondent had held no interest in their concerns since the first day of the institution of their partnership, and that a claim they had filed against him for Rupees 509-1-84, balance of dealings with him in their favor, had really caused this counter-demand on them.

Respondent in proof of his own share in this partnership, referred the Court to the Books of it, in which the signatures of various members of the family would be found set to the annual settlement of the accounts. He added that the dispute respecting the separation in A. D. 1815 was carried before Aba Bamb Soobedar, before whom Appellant promised to settle accounts, but neglected to do so, and the matter was afterwards mutually referred to their own Cast, which was prevented from coming to a decision by the change of Government, and he offered to prove that he had been kept from suing in Court by Ruza Fureed's agreeing to come to a settlement.

Appellant

Appellant observed in rejoinder that the claim must be thrown out under Section 12th Regulation 3d of 1819.

Three witnesses were called on the behalf of Appellant and his partners, who deposed to their having had transactions with the Firm, but knew nothing of Respondent's having any interest in it. One had been a Goomashta of the Firm, for 8 years up to last year, and deposed that Respondent was not a partner in the Firm, nor managed its concerns, but he, his Brothers, and his son, had accounts Current with it. Admitted that as long as a family live together they have all a joint share in the transactions which one member may carry on, and that during the time he was in the House, Respondent and Appellant did live together, but afterwards separated.

Respondent's evidences were then examined, and proved generally the Custom of the Country, as agreeing with the Hindoo Law, that Brothers being members of an united Family, would share equally in the profits of trade. They spoke of the Punchayut held for a short time in the dispute between the parties in Aba Bamb's time respecting the affairs of the Firm. Some of them deposed to Respondent having proceeded to Bombay to assist the Firm in their embarrasment, and all spoke their belief that the Family remained undivided until A. D. 1815, when Appellant separated. The Patel of the Cast handed up the arbitration Bonds given by the parties to abide by the decision of the whole Cast in this dispute, in number four, the first by Respondent, under date 1st Chytur Vud A. S. 1738 or 13th April 1816. The other three were on subsequent dates of the same month, one by each of the three remaining Relations, members of the joint Family, Sheoram, Sudaseo, (the Father of Appellant) and Sukharam, all demanding a separation and division of property, admitting also the fact of the partnership having been established by Respondent, the eldest of the four, from whom they demanded an account of its profits. Sudaseo in particular admitted that the foundation of their property had *probably* been

laid

laid by Respondent, and from the tenor of his agreement seemed merely to consent to the Investigation, whilst the other two appeared to have demanded it.

Respondent in support of his case, exhibited the Depositions of some witnesses taken in two other cases, the first, of the Firm (Moohummud Mohee-ood-Deen, and Jaeeram Sudaseo) versus Respondent, the other of one Meean Johuree against him. This evidence related generally to the embarrasment of the Firm, without shewing any thing satisfactory on the point now in dispute. Two of these witnesses however, of their own Cast, deposed that the parties were united, both in their families and business up to the time of their application to the Cast, and one of them was named Umpire by the whole of the family to settle their dispute, and they gave him a Paper agreeing to abide by his decision, dated 13th Chytur Vud.

Naro Pandoorung, Dufturdar under the late Government, said that Government had dealings in Bills with the Firm, but nothing to do with Respondent, who was not called upon when the Firm was dunned by the Surkar during their embarrasment. He however allowed that Appellant and Respondent lived together until A. S. 1737, A. D. 1815, and that it was the Custom of the Country for all the members of an united family to share profits as long as they continued united.

The Deed of Partnership ran in the name of Moohummud Mohee-ood-Deen and Jaeeram Sudaseo; was written by Respondent's Son, signed by Jaeeram on his own part, and Ruza Fureed for his Son.

Appellant also gave in a Deed of Partnership between Respondent's son and Moohummud Mohee-ood-Deen in a cloth business, in which it was distinctly declared that Appellant had no share. It was dated in A. S. 1871, or A. D. 1815. Other papers were produced to shew that money had been borrowed from Moohummud Mohee-ood-Deen, which debts were

expressly

expressly declared not to be against Appellant. The Decrees in four different suits among the members of this Family, proved little more than they were all quarrelling one with the other, about the accounts Current existing among them.

Appellant called upon the Court to take into consideration the 6th Section of Regulation 4th of 1817, and the 12th Section of Regulation 3d of A. D. 1819, as applying to this case.

Respondent again begged the Court to take the opinion of the Shastree, whether he was not entitled to a decree in his favor.

The Court accordingly asked the Shastree, whether, according to the Hindoo Law, four Brothers living together with their Sons, and one of the sons, of the age of about 16 years, entering unto partnership in business with another person, the whole of the Family had necessarily a share in the profit or loss arising from such transaction, or whether the son was capable of having a distinct share in such business by himself, and supposing the family to share, what would be the share of the Eldest of the four Brothers?

He answered, It is decided in the Mitakshura, Munoo, Muyookh, Daya Rutnu, and other Books. And first, the Mit. (Book second, leaf 49th, page 2nd, line 15th,) " If the common " stock be improved an equal division is ordained. Among " unseparated Brethren, if the common stock be improved or " augmented by any one of them, through agriculture, com- " merce, or similar means, an equal distribution nevertheless " takes place, and a double share is not allotted to the ac- " quirer." (Cole. Mit. Ch. 1st, Sect. 4th, 30-31.) Again, if the Brothers being united, have all encreased their joint stock, or, have reunited after separation, they must still share alike. (1) Sons share the Estate of their Father after his demise, but

(1) The Shastree has strangely connected the first half of the 215th and last half of the 216th Couplet of Munoo's 9th Chapter. The value of his quotation will be seen by comparison; 215th, " If among undivided brethren living with their father, there be a " common

but as long as the Father is not by Law incapacitated, the sons have no rights during his life. Munoo again (Ch. 9th verses 205 and 6) "And if all of them, being unlearned, acquire pro-
"perty before partition by their joint labor, there shall be an
"equal division of that property without regard to the first born;
"for it was not the wealth of their father; this rule is clearly
"settled respecting the fatherless. Wealth, however, acquir-
"ed by learning" (Vidhya Dhunu) "belongs exclusively to
"any one of them who acquired it." And in the Mit. (Book second, leaf 20th, page 1st, line 15th,) it is written, "A person
"under sixteen years of age is called Bal or Pougund. After
"that age he becomes fit for business, and his own master in
"Life whether his parent be alive or no." Again, (in the 13th line) "A Son" [Sootu] "whilst under 20 years of age, shall
"neither pay the debts of his Father, Paternal Uncle, nor even
"of his Elder Brother, when they are absent." Also (in the 16th line) it is said, "Even if become independent, but not
"qualified for business" (that is, between the ages of 16 and 20)
"he shall not be bound to pay their debts." The Muyookhu, quoting this saying of Narudu, "The religious duty of unsepa-
"rated brethren is single; when partition has been made religi-
"ous duties become separate for each of them," says, the Religious acts of the Father, Paternal Grandfather, Son, Grandson, Uncle, and Nephew, are, as long as the family are united, the acts of all.

The above was thus explained, that when one of four Brothers, living with their families united, had accumulated any wealth by trade, they would all share it alike. But the Shastr made an exception to this Rule, that all Vidyu Druvyu or property

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"common exertion for common gain, the father shall never make an unequal division
"among them when they divide their families," and 216 "A son born after a division
"in the life time of his father shall alone inherit the patrimony" (the share reserved at the division by the father to himself) "or shall have a share of it with the divided brethren
"if they return and unite themselves with him" (which they would of course generally be glad to do.)

perty acquired through Science, exclusively belonged to the one who made it. As long as a Father lived, his Sons had no authority over his property, but after his death the Sons would share it in equal proportions. A person is termed Bal, until of the age of 16 years, and after 20 years he is Vyuvuharee or capable of conducting business. But until 20 years old, he is not, during his Father's lifetime, nor after, to be considered capable of transacting business on his own account. The Gain and loss of the Family will be shared by the Elder Brother equally with the rest.

In considering all the circumstances of the case, the Court was of opinion, that both the Hindoo Law and Custom of the Country, as far as it could be ascertained with respect to Hindoos, were favorable to Respondent's claim, as far as Appellant Jaeeram Sudaseo was concerned, but Respondent had failed to establish any claim against the others, the Defendants, who as being Moohummudans could not be supposed necessarily informed either of the Laws or Customs of another Religion, so as to make these binding upon them. It was therefore decreed that the Appellant Jaeeram Sudaseo should either within two Months render a true account, after deducting any sums Respondent had received, of the profits or losses of the Firm, from its first establishment till the date of Appellant's separation, in the month of Vyshak 1737 to Respondent, and put him in possession, if there were profits, of an *eighth* share of the whole, (2) or should pay the sum sued for, Rupees 795, with interest up to the present time, at three quarters per Cent per month, and should in either case pay Respondent's Costs.

The Defendants Ruza Fureed, and Moohummud Mohee-ood-Deen, were declared not responsible to Respondent, who was ordered to pay their Costs.

Decree 12th May 1820.

The

(2) Because the Moosulman partners being entitled to four eighths, left four eighths among the brothers, or one eight to Respondent.

The Court concurred in opinion with the Zilla Judge, and finding, from a reference to the Hindoo Law Officer, that he approved of the Vyuvustha given by the Shastree of the lower Court, the Decree of the Judge was affirmed, with the period of two months further allowed to Appellant, for rendering his account, in default of which he should be charged Interest on the principal sum awarded from the date and at the rate therein specified, now paying full Costs.

Sudur Udalut, *Sitting Judge.* J. Romer. *Second Judge.*

Decree 27th Feb. 1821.

N°. 11.

Mr. NHANEE BUHIN,.....Appellant,

VERSUS

Mr. UMROOT BUHOO,.....Respondent.

ON the 17th February 1819, Appellant filed her suit against Respondent in the amount of Rupees 20,000, as her half share of certain property. In the plaint she stated that her late husband Prumanund Gungadut, who lived at the village of Thamna, Purgunna Uleena, had altogether five wives, herself, by whom he left two children; by Respondent, he had one child; by his third, he had Deokrishna, still alive but his mother was dead, as were the fourth and fifth wives without issue. Appellant's children were still young, but Deokrishna was thirty-four years old. Prumanund died on the 14th Shravun Sood A. S. 1873, or 27th July 1817, and on the 8th Phalgoon Vud, A. S. 1874, or 29th March 1818, Respondent's child died also. By the Rules of the Cast, Respondent thereby lost all right to a share of the Inheritance, but she had claimed it, connecting herself for the purpose with Deokrishna, and a Karkoon Ramchundur Gopal. By his intrigues and promises she was induced to sign two or three Blank papers, with a view to settle the dispute without going before the Government. The Karkoon

Kaira Udalut, G. W. Anderson, *Judge.*

Dispute between the first and second wives of a person deceased, Appellant, the first, claiming from the second who was childless the property of their late husband. Claim thrown out in both Courts on proof of Arbitration, and passing by Appellant of an aquittance for her share.

koon then settled that three anas, or sixteenths, of the property being assigned for the funeral expenses of their husband, Appellant should have four and a [illegible], Deokrishna the same, and Respondent the remaining four anas. Appellant would not agree to this distribution, and demanded a Punchayut, but the Karkoon came and forcibly broke open a Box, and taking out the property within it, gave to Respondent as much as was worth Rupees 45,000, as her four ana, or fourth, share agreed upon. All the subsequent expenses however they had obliged Appellant to defray, and would not allow her to sell any part of the remaining property. Appellant therefore claimed recovery of this property, as unjustly and unlawfully taken out of her possession, to the amount of Rupees 22,500, leaving Deokrishna, to whom the remainder of right belonged, to sue for it when he pleased, and deducting from that sum Rupees 2,500, as half the maintenance Respondent would be entitled to from them jointly, Appellant filed her suit for Rupees 20,000.

Respondent in answer said the three parties had agreed mutually upon having a Punchayut, which was accordingly formed by persons of their village and Cast, under a regularly executed Bond, and for the result of which they had interchanged Farighkhuts, after a regular division of part of the contents of the Box among them. The remainder was locked up again in the Box, and the usual Guard of Peons which Prumanund placed over this Box was kept up to the present time. Appellant's claim was therefore unfounded. In reply, it was pleaded that a Widow without children by her husband, had never yet been in their Cast allowed to share in his property, and Respondent's claim of right to retain the property she had got hold of, must therefore fall to the ground.

The Farighkhut, handed up by Respondent, was dated 2d Chytur Sood A. S. 1874 or 7th April 1818, and witnessed by twenty one persons; as signed and passed by Deokrishna and Appellant's two sons, Nurbheeram and Kevulram, to Respondent

dent and her son Nuthoo Bhaee, premising that the Punchayut having decided upon the manner of the division of the joint property, it had been by them divided accordingly, in presence of all, to Deokrishna four and half anas; to Nurbheram and Kevulram, four and half; four to Respondent; and the remainder, a three ana share, to be expended on Prumanund's funeral ceremonies. The property thus divided was specified to consist of Household furniture, Clothes, money, Jewels, and ornaments. Fifty Beeghas of land, lying in three different villages, was said to have been already given up to Respondent during her natural life, and a room of a particular house in Oomreth, was to be assigned to her to reside in during her life, and another room in Thamna, or else she should have a whole house in Oomreth, after Rupees 2,000 had been laid out in repairs upon it.

Rules were at the same time laid down for the future division of the remainder of their Estate, (consisting of houses, lands, and shops, in different parts of the Country,) between Deokrishna, and his two Brothers, Appellant's sons, in equal shares. Ramchundur Gopal, the Karkoon mentioned by Appellant as interfering in the Affairs of the family, but in fact Komashdar of Nureead, was summoned to give evidence of his share in the transactions in dispute. He said he went to Thamna to settle the Revenue of it for the year A. S. 1874 and being a friend of Prumanund, was requested by the sons to go to their house and assist them in arranging their affairs. He had declined at first interfering with the nomination of a Punchayut, which they had requested him to fix, and even refused to attest the Deed of separation which they subsequently executed. However, in consequence of a dispute caused by a Bhut who claimed something from the Family and threatened to stop the Feast they were giving to the Cast, he admitted that he left two Peons there to keep the Peace, and prevent the Bhut from interrupting the Feast. He utterly denied having caused Appellant to sign any blank papers, or having had any thing to do with the settlement or division of the family property, which was done by the

Punchayut

Punchayut alone, without his interference, or attestation of their award. One of the Peons belonging to the Treasury Guard of the family, did complain to him that the Blacksmith of the village had been tampered with to tell a story of his having been employed to force open the Treasure Box, on which witness sent for him, and having heard his story, denying all knowledge of such circumstance, or of his having been so employed, witness made a memorandum of the case. He admitted that he was in the house when the division took place, but not in the room where it was made.

The members of the Punchayut agreed in their account of the shares agreed upon for each party, and some of them assisted in dividing the property as mentioned in the Farighkhuts, which those persons witnessed. They also agreed that Ramchundur Gopal was present, but neither sat in the Punchayut, nor spoke nor interfered in any way.

Shunkurdas Ujjoo Bhaee, Patel of Thamna, and Head, or Umpire of the Punchayut, produced the decision they had made, and the agreement of the parties to abide by their decision, on which the members had proceeded to pass it. The latter was dated 11th Phalgoon Vud, or 1st April, in the name of eight persons composing the Punchayut. The Decision was dated Thursday 12th Phalgoon Vud, or 2d April, and provided, that every thing should be divided into sixteen shares, and given in the proportions above set forth in the Farighkhuts.

The Court considered the Farighkhut to be a very distinct Deed of division and release. Appellant had examined the witnesses on the manner in which the three Deeds were executed, in which they did not exactly agree, but it was to be recollected that Appellant had admitted their execution, though with reservation of their being then Blank papers, and they were all signed, and also drawn out, in the names of her sons. After all the evidence had been gone through, Appellant wished to adduce proof of Ramchundur Gopal having broken open the Box, but

the

the Court held, that as that person was responsible for such an act, if committed, and liable to an action of damages, his case was not to be here prejudged. Appellant then prayed that the Custom of the Cast might be inquired into. The time for this, the Court said, was when it had been determined to set aside the arbitration.

In reviewing the case, it was observed that the only reason to cause a doubt of the Appellant's perfect free will and voluntary consent to the arbitration, arose from the presence of the Nureead Komashdar. Whether his presence was to be interpreted into an influence, and whether, under it, Appellant consented to the arbitration against her Will, was to be inquired into. Now it was not shewn that he had exercised any authority over Appellant, and it would be hard upon Respondent to hold the Arbitration vitiated because the Komashdar was present and took an interest in the proceedings, which was caused by his friendship for the family. There was no other reason to think that Appellant had not willingly submitted the dispute on her part to Arbitration. She had utterly failed in proving her assertion of having signed blank papers, and as Respondent had got possession of the share allotted to her by the award, the Court could not, under all the circumstances of the case, consent to set aside the award, more particularly since eleven months had elapsed before the action was laid, whereas, if compulsion had been used, Appellant would no doubt have at once complained of it. The Deed of release, passed five days after the award, was conclusive, and the best proof of Appellant's acquiescence and agreement in all the matters done. It was to be regretted that the Komashdar of Nureead had appeared in the business, but his presence was not under such circumstances as would be fatal to the award, and it would be unjust to Respondent to make it operate against her. It was decreed, under Clause 3d Section 3d Regulation 7th of A. D. 1815, that the award was valid, and the Deed of Release passed by Appellant for the very property

for

for which she now sued, was binding against her and her claim was dismissed with all Costs.

Decree 16th May 1820.

Sudur Udalut, *Sitting Judge.* J. Romer, *Second Judge.*

Appellant founded her Appeal upon the same grounds as she had taken in the Zilla Court, that the Punchayut was forced upon her by Ramchundur Gopal, the Komashdar of Nureead, adding that Nuthoo Bhaee, Son of Respondent, whose name was coupled with that of his Mother in the Punchayut namu, and the award, was actually deceased at the time, having died three days before the date of the first of these Papers. Respondent admitted this charge, explaining as a reason for inserting his name, that it was done at the desire of the arbitrators, with a view to furnish the expenditure necessary for his funeral rites, out of the Estate of his Father. In answer to a question from Appellant, Respondent said his age was seven years when he died. The Judge was disposed from the Proceedings to take the same view of the case that the Zilla Judge had, yet was of opinion that the part alleged to have been taken by the Nureead Komashdar, first in bringing about the Punchayut, and subsequently in the execution and maintenance of its award, was worthy of being enquired into. He agreed with the Zilla Judge in thinking that this could only be done regularly by means of an action against him by Appellant, which would clear up all doubts regarding the perfect free will of Appellant in agreeing to the Punchayut, and enable the Court to proceed to final judgment upon safer grounds than existed at present. Appellant was therefore informed that, for the reasons given by the Zilla Judge, evidence of the Komashdar having broken open the Treasure Box could not be taken in the Sudur Udalut, but if she chose to bring an action against him in the Kaira Udalut to try the question of his alleged illegal interference, the Court would postpone its judgment on the present Appeal until decision of such suit, and the case was referred to a competent Court.

Competent Court,

The Court concurred with the second Judge in thinking that

Judgment

Judgment should be postponed until the result of the action which Appellant intended to bring against Ramchundur Gopal, should be known. The suit was therefore directed to be laid over till decision of that suit, provided it were brought within three months from that date, 26th July 1821.

J. Elphinston, *Chief Judge*, J. Sutherland, *3d do.* Decree 23d Jan? 1823.

The Judge of Kaira certified to the Sudur Udalut, under date 30th October 1821, " that Appellant had hitherto failed " bringing any action against Ramchundur Gopal, Komashdar " of Nureead." The Sudur Udalut therefore affirmed the Decree of the Kaira Udalut, with Costs against Appellant.

N°. 12.

BRIJBHOOKUNDAS BINDRABINDAS, and PRUBHOODAS POORSHOTUMDAS,..... } *Appellants,*

VERSUS

PURMANUND BHUTOORAM, Heir of the Firm of BHUKTOO-MUL MOOLCHUND,..... } *Respondent.*

THE Respondent filed the suit originally in the Zilla Court on the 14th April 1818, to recover from Appellants, Rs. 751-1, due on Awuk or Respondentia notes.

Surat Udalut. W. A. Jones, *Acting Judge.*

The plaint stated that in A. S. 1868, or A. D. 1812, Appellants executed to him two Respondentia notes, the first for Rupees 260, upon two Bales of Goods, the second for Rupees 520, upon one Bale, which with interest Rupees 400-2, made Rupees 1180-2, total amount due on the above Goods shipped upon the Ahmud Shah. Out of this sum Rupees 37-2 were due to Appellants for Premium, and Rupees 391-3 more were to be credited to them as the sale Proceeds of the insured Goods, damaged when the ship got aground at the mouth of Bombay harbour.

Case of Respondentia parallel to, No. 40 of the Bombay cases. Sitting Judge inclined to uphold the principle that Respondentia is on the block but the full Court maintained the Principle established by the Sudur Udalut.

harbour. For the balance, or the sum sued for, the Appellants were to be held justly liable under the Bonds, and the Respondent brought his action to recover from them accordingly, quoting the Precedent of a former decision by the Sudur Udalut against Appellants' House on a similar case, wherein the claim was allowed.

Appellants drew the Court's attention to the Bonds, the first only specifying Goods, the other relating merely to the Block. They pleaded in defence that the Ahmud Shah, on board which the Goods were shipped, having arrived in safety, they, the Insurers, were not liable for partial loss to the Goods insured under the second Bond. Had the ship been lost, they admitted they would have been bound to pay the Insurance on it also. Respondent having alluded to the decision of the Sudur Udalut on a former case, they could only say, with all respect for it, that the Custom prevailing among the Merchants of the place did not warrant a decision in the Respondent's favor under the second note. For the first, they were ready to pay the amount insured by it upon production of the Invoice of the Goods shipped on the Ahmud Shah in Bengal, and proof of the sale of them here.

Respondent declared, that at the time of the accident, the Merchants gave notice to the Brokers of the loss sustained, and desired them to receive the damaged Goods. The Brokers told the Merchants in answer, to keep the Goods and they would make good the loss. The Merchants would not agree to this, when the Brokers drew up a Paper threatening to have no further dealings with them since they refused to conform to the wishes of the Brokers. The Merchants drew up a counter declaration, agreeing, since the Brokers took it so much to heart, to keep the Goods as proposed. Respondent demanded the reason of Appellants' refusing to abide by the Terms of an arrangement which they had forced upon the Merchants.

Appellants said the negotiation above alluded to was caused

by

by the attempt of the Trade to oblige the Brokers to receive the Goods contrary to established usage, and the Merchants were obliged to give in by keeping the property insured. They denied the second part of the charge, that the Brokers had agreed to bear the loss.

Respondent exhibited the Awuk Notes, the first dated Saturday 3d Phalgoon Sood A. S. 1868, or 15th February 1812 passed by Appellants' Firm for Rupees 260 as an Insurance, in the usual terms, upon two Bales of Silk entered at the Custom house and marked (1011) to be shipped in Bengal. The money to be repaid sixty seven days after the date of the note, interest to commence in default of payment at the expiration of that time at $\frac{3}{4}$ per cent per month. The other note, which was negotiated through Broker Gopaldas Premchund, was dated 10th Vyshak Sood 1868 or 21st April 1812 " passed by Khutree " Bhuktoo Mul Moolchund, (Respondent) for Rupees 520 " cash received upon one Bale of Silk, to be shipped upon the " Ahmud Shah, Captain Fitz George. The risk is to com- " mence on the ship weighing anchor in the river at Bengal, " and to cease on her dropping anchor at Surat. In case of " goods being thrown overboard, the Insurers are to divide " that loss, and all other loss at sea, between them. The mo- " ney is to be repaid sixty seven days after date of this note, " or interest to commence in default payment at the expiration " of that time, at $\frac{3}{4}$ per cent per month."

Respondent likewise handed up, two certificates dated 29th October 1812 of payment of customs upon two Bales of damaged raw Silk, landed in his name from the Ahmud Shah.

An invoice signed by Captain Fitz George, of a Bale of Raw Silk and piece goods marked (C. H. No. 133) shipped in Bengal for Bombay in the name of Bhuktoo Mul Purmanund, (Respondent.)

The decision of the Sudur Udalut, upon a note of Respondentia

dentia similar to those now produced, being in favour of the party insured recovering under that note, from the insurers. (This decision has been already reported, No. 40 of the Bombay Cases.)

Two Invoices of the two Bales insured in the first note, and an account sales of the goods damaged by the accident.

The Court observed on this case, that Appellants admitted the demand of Respondent would have been a just one, if the vessel had been lost, but the ship having arrived in safety, Respondent had no claim upon them, since in the second note, no mention was made of goods. But the Court, on examination of it, deemed that it was written on account of goods, and not solely on the vessel, and considering also the Decree of the Sudur Udalut, it was decreed that the suit of the Respondent was proved, and Appellants were adjudged so pay the sum sued for, and all costs, besides interest upon the Balance principal Rupees 350-3: at 9 per cent per annum, from date of the notes to that of the decree.

Decree 12th June 1820.

Sudur Udalut, *Sitting Judge.* J. Romer, *Second Judge.*

The appeal was filed in the Provincial Court as No. 806, and transferred to the Sudur Udalut on the dissolution of that Court.

The sitting Judge was of opinion that the second note for Rupees 520 was so worded as to make it doubtful whether goods could be understood to be insured by it or not. Whatever might be due on the first Bond for Rupees 260, the Court was of opinion that Respondent was entitled to recover. Under the doubt above expressed of the nature of the second Bond, the Court did not feel authorized to decree the amount said to be due upon it, in the same manner as if it were clearly and fully expressed upon the face of the document, that the transaction was for goods, and being therefore of opinion that the decree of the lower Court should be so far amended, referred the case to a Court of two Judges.

The

The Court after mature deliberation on all the proceedings held in this case, and after referring to the proceedings of the Sudur Udalut in former cases, and to the precedents established by them, found that they could not concur in the opinion recorded by the second Judge in considering the second Bond to be of that doubtful nature to require the proposed amendment of the Assistant Judge's Decree, and being of opinion that the Bond was written on account of goods, determined to affirm the decree passed by the acting Judge; costs in Appeal and interest at 12 per cent on the sum adjudged in the lower Court from the date of the decision to be paid by Appellants.

Competent Court, J. Elphinston, *Chief Judge*, J. Sutherland, *3d do.*

Decree 13th July 1821.

N°. 13.

MUNCH, HURJEE JAMASPJEE, (afterwards his Son BAHMUNJEE) PUNDIA, TOOLJARAM, and JUGJEEVUN Sons of ASARAM and LUKMEERAM JAEESHUNKUR, Partners of a Firm..... } APPELLANTS,

VERSUS

ULEE KHAN NUTHOO BHAEE,..... RESPONDENT.

THIS Suit was filed by Appellants in the Zilla Court of Ahmudabad on the 28th February 1817 to recover the sum of Rupees 8,386 balance due upon a Bond of Rupees 9,000, and a debt of Rupees 2,000, for the balance of dealings between Appellants, and Respondent's Grandfather, Saleh Ismael. The parties were all of Bhownugur, and Saleh Ismael on the 6th Margsur Sood A. S. 1840 or A. D. 1784 passed to Appellant's Grandfather a San Gireneea Khut, or Bond of mortgage conveying actual possession of a house and shops, in the amount of Rupees 9,000. In the year A. S. 1843 a firm was established in the name of Deoram Asaram, by Respondent's Grandfather, as half proprietor, and by the Fathers of Appellants,

Ahmudabad Udalut, E. Ironside, *Judge.*

In a case of San Gireneea, (or mortgage) vesting possession in the mortgagee of a house and four shops, it was held by the Sudur Udalut, that where possession had remained with the mortgager for a series of years, without clear proof of possession by

the mortgagee or of his being ejected, the marriage would not hold.

But that part of the mortgaged property of which possession was shown to have vested in the mortgagee, was held liable to sale in satisfaction of his claims.

laints, two persons, proprietors of the remaining half share. The Appellants' share of the profits up to A. S. 1851 or A. D. 1795 amounted to Rupees 2,000. Appellants carried this to account in Ant, (a sort of fictitious exchange, varying in exactly increasing proportion to the depreciation of the current coin) and deducting a Receipt in Ant of Rupees 1,475, left a balance against Respondent of Rupees 9,525, from which deducting Exchange for Ant, left the actual balance principal against Respondent, Rupees 5,443, and the same for interest total Rupees 10,886. This also, their subsequent dealings and Rent Receipts up to A. S. 1870, or A. D. 1814, had diminished to Rupees 8,386, the amount now sued for.

Respondent answered by denying all knowledge of, or participation in, the transactions and dealings which the Appellants had brought against him, and challenged them to produce any Deeds of his Father or Grandfather.

The Bond for Rupees 9,000, and Deed of partnership, were thereupon handed up to the Court by Appellant. By the former Deed Meean Saleh Ismael agreed with the partners of the Firm, in whose names it ran, to repay Rupees 3,001, in about a month, on the 2d Posh Sood A. S. 1840, and Rupess 1,000 more on the 2d Phalgoon Vud, of the same year, or about three months after date of the Bond. For the Balance, with interest whatever it might be, he mortgaged two shops occupied by himself, and four others let to different tenants, as well as his own dwelling house, and compound about it, to be all retained by Appellants until receipt in full of all demands under this Bond.

The Deed of partnership was dated 13th Magh Sood A. S. 1843, passed by Saleh Ismael to Adharoo Jamaspjee Framjee, and Pundia Asaram Bhaeela, to the following effect, that they had jointly established a house of business, in four shares, two to belong to himself, Saleh Ismael, and one to each of the other two, according to which proportions the profits, after payment of

charges

, charges and expenses, were to be divided, Saleh Ismael's share of them going in liquidation of his debt under the above Bond, to the other partners, upon which debt interest was to be charged at 9 per Cent per annum, with a reservation that none was to be charged him for the use of the capital, Rupees 501, with which the other two had set up the business.

Respondent having seen these Deeds, still denied their validity, declaring that Saleh Ismael died in A. S. 1831, or A. D. 1775, which proved them clearly to be forgeries. He added that his Father, and his Uncle Tuyub, separated in A. S. 1828, and divided the property, Tuyub remaining with his Father, Saleh Ismael, whilst Respondent's father carried on a separate trade.

The Court observed, that the transactions were of very old standing, and though some of the Items were brought up in the Plaint to within 12 years from the filing of the Suit, it was necessary first to examine whether payments had actually been made within that time. Appellant said the Houses and Shops were in their possession, and they had only received the rent up to A. S. 1854, or A. D. 1798 for some of them, but for others up to the very date of the Suit. The Accounts were exhibited, but the Court could not admit in evidence such payments credited by Appellants themselves without Respondent's acknowledgment, or payment of any thing personally, though the Shops had been in Appellant's possession. Under Section 13th of Regulation 1st of 1800, the Court held that decision on this claim was therefore prohibited, but to obviate all doubt, Appellants were called on to shew, as they asserted, that they had in person received debts due to the Firm. This they could not do, saying in excuse that the Books were at Bhownugur, and the Court decreed that though the Regulations permitted Suits for Real property to be entertained within Sixty years, yet the present claim was for personal property, or recovery of the advance made upon the houses, which were only mortgaged with

with a power of redemption. And the Custom of the Country in San Gireneea was, that the Owner of real property mortgaged, might at any time redeem it when he could, but the Mortgagee could not force the mortgager to do so against his Will. The Appellants had failed to prove that Respondent had paid any thing within 12 years, and without examining the Authority of the Deeds, therefore the claim was dismissed, Costs being borne by Appellant.

Decree 24th May 1820.

Sudur Udalut, *Sitting Judge.* J. Romer, *Second Judge.*

This Suit was transferred to the Sudur Udalut File from that of the late Court of Appeal, on which it stood as No. 809.

The sitting Judge observed, that though the Suit was originally ill laid, because Appellants were only competent, under the conditions of the San Gireneea Note, to demand possession of the property made responsible by it, yet they had corrected this error in filing their Appeal, by claiming the performance of this point. It appeared that the dwelling house had remained in Respondent's Father's possession all along, *he being credited* for the Rent in deduction from the Interest account, both of it and of the Shops in the Appellants' possession up to A. S. 1854. It appeared to be prohibited by the Regulations for Appellants to sue for the balance of an account after so long a period had elapsed, especially since Respondent did not appear to have taken any personal concern in the payments for which he was given Credit. But Appellants were not prevented from shewing that they had been dispossessed or deprived by an Act of Respondent of the actual possession, or receipt of the Usufruct, of any portion of the real property mortgaged to them, in order that the Terms of the San Gireneea Note in their favor might be held in force. The case was therefore referred back to the Zilla Court, to receive from the parties proof, both affirmative and negative, on the points, First, whether Saleh Ismael and Nuthoo Saleh, Father and Son, made their dwelling house responsible with the other property, by the San Gireneea Note, to Appellants? Whether they, under that

note,

note, enjoyed the Rents of it; from what period and how long? Whether Appellants were subsequently dispossessed of these Rents? by whom and under what circumstances? and, whether they took any measures to recover their rights in the dwelling house, if so deprived of them?

The Return to the Precept shewed that Appellants could produce no direct proof that Saleh Ismael, and Nuthoo Saleh gave their house in Bhownugur, and other property, in San Gireneea to Appellants. The whole of the witnesses to their Bond were dead, and they had failed to prove it in any other manner. They had filed their Books of account from A. S. 1840 to A. S. 1854 to prove that they received rent of this house; it was found entered in some, and not in others, so that it was not shewn to have been paid in every successive year, which they had declared in Court was the case, and excepting these Books there was nothing to prove receipt of the Rent. Being asked for proof by whom, when, and how, they were deprived of the Rent, they represented that they had demanded payment of it since 1854, to prove which they called two witnesses, but they could neither of them say more than that they saw a person go to Respondent, to demand payment of some money, without knowing what was said. Appellants admitted that they took no measures to recover their rights, but to prove existence of those rights and of their demand, exhibited a letter to them from the Thakoor of Bhownugur, dated A. S. 1868, (A. D. 1812,) mentioning that Respondent had agreed to pay the amount of their claim, or surrender the house, at the Deewalee. Respondent however flatly denied all knowledge of this communication, though Appellants said he delivered it to them.

From these proceedings the sitting Judge could not find that Appellants' house or Firm had so acted with regard to any claim upon the house of Respondent, as at this late period would entitle them to be put in possession of the house, as property mortgaged

Decree 16th April 1822.

gaged to them, for the limitation of twelve years operated as a complete bar. The Appeal was therefore dismissed with Costs.

On Friday the 19th April, Appellants presented a petition to a full Court, praying for an order to sell the shops, still in their possession, for satisfaction of their claim against Respondent, or so much as the proceeds would cover, Respondent being held liable, in person and goods, for the remainder. This petition was referred to the Chief Judge, who tried the case, and who on the 29th proceeded to take it into consideration.

On again taking up the case, the Chief Judge was of opinion that the recovery of the sum due upon the shops had not suffered the same lapse as occurred with regard to the house, the possession of which it was doubtful had ever vested in Appellants, and the Rents were certainly never paid to them after A. S. 1854, whereas the Shops had remained in their hands until the present day. The recovery of the money lent on the San Gireneea Note being one of the things sued for, the possession of the shops had preserved to Appellants the right of making them available to this object, although the lapse of time was found under the limitation of the Regulation, to have barred their claim in this respect on the house.

The Sitting Judge being therefore of opinion that a review of Judgment, under the provisions of Section 31st of Regulation 5th of A. D. 1820, was advisable, to correct the omission regarding the disposition of the Shops, recommended such a review to be granted, referring the case for the purpose to a competent Court, which might also take cognizance of Appellants' further claim against the person and property of Respondent, for any balance that might remain, and could also settle the question of Costs.

Competent Court.
J. Sutherland, *Second Judge.*
T. Barnard, *Fourth Judge.*

The Court resolved, for the reasons assigned by the Chief Judge, to grant a review of Judgment, and thereupon amended his decision, decreeing that Appellant should be at liberty to satisfy himself out of any property he was then actually possessed

of

of belonging to the Estate of the late Tuyub, and Nuthoo, sons of Saleh Ismael, for whatever claims he might have against their Estate, Costs being also recoverable therefrom by Appellants, they paying those of Respondent in the Appeal.

Decree 18th July 1822.

N°. 14.

HUEBUT RAO MANKUR.....APPELLANT,

VERSUS

GOVIND RAO BULWUNT RAO MANKUR, RESPONDENT.

South Konkun Udalut, V. Hale, *Judge.*

Case of adoption. Respondent claiming the sixth of an Inam village as adopted son of the former Holder of that share of it.

Opposed on the grounds of the adoption being illegal, as performed without orders from the existing Government, and informal as Respondent was an Eldest and only son.

Opinions of the Zilla Shastrees, that a Widow is competent to adopt a son, who thereupon succeeds to the Estate of her late husband.

Adoption of a Nephew legal, if performed by word of mouth alone.

The sin of a forbidden adoption lies with the giver not the recei-

RESPONDENT originally sued Appellant in the Zilla Court under date 2d May 1820, in the amount of Rupees 5,000 being Rupees 4,000, ten years' produce, or the value according to the Regulation, of one sixth share of the Inam village of Khurowlee in the district of Tule, in the Rajpooree Prant, and Rupees 1,000 part of Rupees 1,200 estimated value of that share's produce for three years, during which time Appellant had unjustly withheld it from him. The parties both resided in the village, which belonged wholly to the Family among whom it was formerly thus divided, to Chimajee Rao Mankur, a half, which he still held, and to Govind Rao Mankur, Respondent's Grandfather, the other half. He left three Sons, Bulwunt Rao, Mulhar Rao, and Appellant, Huebut Rao. These three separated many years ago, each managing his own sixth share. Bulwunt Rao died on the 8th Posh Sood 1734 of Shalivahan, or 10th January 1813, and his Widow Gunga Baee prepared to follow him as a Suttee, but changed her mind, and adopted Respondent as her son. Respondent thereupon succeeded to the management of Bulwunt Rao's share, with he held from that time until A. S. 1737, Sittu Ashur Miyaten wu Uluf or A. D. 1816, after which Respondent joined the Peshwa on duty, and Appellant then seized the share, and kept it for the next three years,

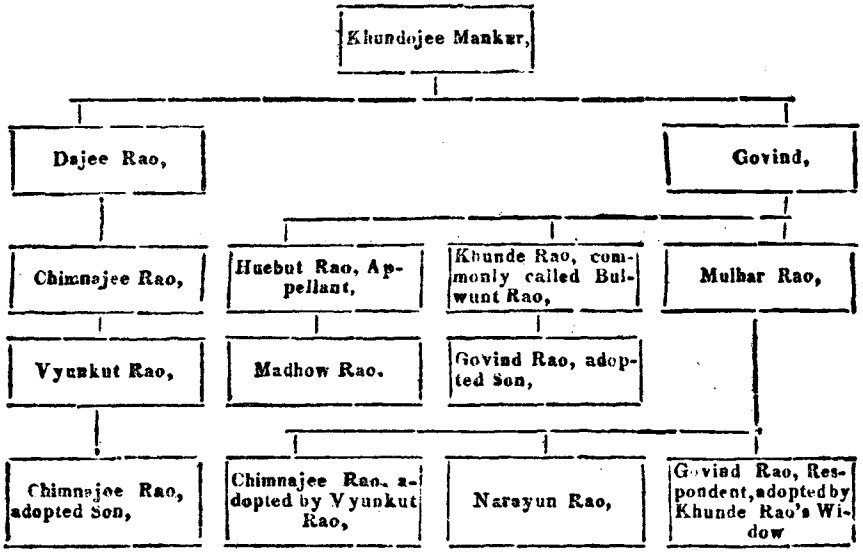
Sittu,

ver. No authority to be found for annulling an adoption.

Decree passed in favor of Respondent by the Zilla Court and affirmed by the Sudur Udaluton the Vyusthа of their Shastrees, backing that of the Zilla with the same and other Authorities in favor of the Adopted Son.

Sittu, Subba, and Summan Ashur Miyaten wu Uluf. Respondent last year, Tissa Ashur, got an order for possession from the Collector at Bankot, on the 9th October 1818, and on Appellant complaining against it, a fresh enquiry was there instituted, and Respondent's Title confirmed by the Collector under date 16th April 1819. Respondent again therefore got his share, but Appellant having again applied to Bankot, the parties were recommended to get their case settled in the Udalut. This was the substance of the plaint, and as Appellant suffered judgment to go by default, the Suit was tried exparte, and Respondent called on by the Court to enter into proof of his claim.

The Genealogy of the family was as follows.



He first exhibited the Inam Putr, under which the Family held the village. It was dated 25th Shuwal, of Isne Arbaeen Miyaten wu Uluf or A. D. 1742, directed to the Desh Udheekaree, Lekhuk (Koolkurnees) and all other authorities of the Sooba of the Prant, by Balajee Bajee Rao Peshwa, stating that Khundojee Mankur having petitioned him at Poona, representing his long and faithful services, and the dangers he had undergone in them, and that he was still willing to perform the like service, and begging that he might therefore be endowed with an Inam village, the Peshwa, observing that these

services

services had been chiefly performed in the Prants of Rajpooree, Sashtee (Salsette) and Wussaee, (Basseen,) took his petition into favorable consideration, and resolved to give him the village of Khurowlee, in the Tule Mamlut of the Rajpooree Prant in Inam, which he therefore granted from the Current year, with all the produce of its lands, Jeerayut and Baghayut, the Mohturfa (or shop taxes) with the Nukd Babs, or money taxes, salt tax, and all other taxes now existing, or in future to be laid on; with the water, Trees, and stones, and all treasure trove, with full power to levy Revenue and to fix laws for the inhabitants. The Sooba was enjoined to uphold him, and his Heirs for ever in possession of this Inam, and not to trouble him hereafter for production of this, his Title Deed, but then to take a copy of it, and restore the original to Khundojee Mankur, abovementioned.

The Deed of separation, alluded to in the petition, was dated 12th Jumadee ool Akhir, Isne Miyaten wu Uluf A. D. 1802, or 1723, Shalivahan Doormateenam of the Sumvutsur, or Vikramujet. It purported to be " A paper of Articles, drawn up at a private settlement of the Estate of Govind Rao Mankur Mokasee, of the village of Khurowlee &c. between Khundojee; Mulhar Rao; and Hybut Rao, Mankurs.

Article First.—Provided that each should in turn manage the village for the year, acting under the direction of their Father.

Second.—The Khotee and Inam villages were to be managed carefully, as regarded the debts of the Ruyuts, who were not to be injured, and

Third.—They were all to be managed for the present year according to the estimate already made.

Fourth.—The debts due to their Creditors were, on their separation, to be equally divided out among the three.

Fifth.

Fifth.—The children of all being unmarried, with the exception of one married the year before, it was resolved, that when they separated, whoever had the largest family, should receive a deduction from the amount of his share of the debts.

Sixth.—That the household furniture, Arms, and Jewels should be inventoried, and the List deposited with their Karkoon and should be again inventoried every year.

Seventh.—The gain or loss of any one of them who should obtain an employment, was to be exclusively his own.

Eighth.—All three should have similar establishments of Servants, and keep their expenses exactly even.

Ninth.—The expenses of whosoever turn it was to be at Poona every year on duty, should be paid from Khurowlee.

Tenth.—The person to whose tour of management it fell, was enjoined to be cautious and honorable in the trust, and, to commit no fraud, and for his trouble was to be allowed fifty Rupees out of any Antust (Presents) that he might realize carrying the rest upon honor to account.

Eleventh.—The person going to POONA or any of the three leving the palace, was forbidden to carry *his* WIFE with him, it being declared that their families must remain at Khurowlee.

Twelfth—Having satisfied themselves respecting their affairs in general, without troubling themselves with accounting for the little private gains of each, and the loss of a few things, they resolved that each should keep such ornaments and Jewels as his own Wife and Children at the time possessed, and

Thirteenth.—On division, each should keep his own things then in his possession as his share of such property.

Fourteenth.—One of their Sons, Bapoo, having built a house in the Kansar Wulee, it was allowed to be kept by him, and the other two were to take so much more land on the division as would make up for it.

Fifteenth.

Fifteenth.—They left the point of precedence and care of the Household Gods and Family Records, to be determined by four Zumeendars, and four of their friends (Tirayuts) above the Ghats in the Dukhun.

Sixteenth.—All other matters were to be settled by a Punchayut.

Seventeenth.—A fourth share of every thing real and personal being set aside for their Father, the three were to divide the remaining three shares.

They in conclusion bound themselves to obey their Father in every thing.

This Deed was signed by the three Brothers, and Respondent handed up another, shewing the eventual division of their Landed property, which was therein laid down " after actual inspection by Gunesh Khundo, and Trimbuk Sudaseo, two Karkoons from the Fort of Mangurh," (from which the Family takes its name.) It was dated 5th Jesht Vud Tissa Tissaeen (Miyaten wu Uluf) or A. D. 1799.

A Certificate that Gunga Baee, the Widow of Bulwunt Rao, had adopted Respondent as her son, signed, by proxy, for Naro Punt Nana Borus, a Karkoon of the Sooba; by Bhugwunt Khundo Rao, Deshmookh of Tule; by Sabajee Rao Rane, a Surdar of the Government in charge of that Sooba; by Gopal Joshee Gokle, the Gram Joshee or Village Astrologer; by Kur Joshee Raireekur, and other respectable persons of the surrounding country; besides ten of the Village Officers of Khurowlee itself, and in the names of one hundred Brahmuns, and two hundred Ruyuts of the surrounding Villages; and of seventy men from the Sooba, all signing to certify " that Bulwunt Rao " dying on the 8th Posh Sood, Sullas Ashur, 30th December " 1813, his Widow requested leave to adopt a Son, on which " Mulhar Rao Mankur gave up his Eldest son to her to induce " her not to burn, and that the circumstance took place in their " presence."

" presence." An order, issued by the Tule Muhalkuree, under date 9th Zilhez Ashreen Miyaten wu Uluf, or 30th September 1819, shewed that the Collector had issued instructions, after ascertaining the fact of adoption, for putting Respondent in possession. Respondent also gave in an account in his name, of a sixth share of the village for the years Arba, Khumsu, and Tissa Ashur and Ashreen, or A. D, 1813, 14, 18, and 19, 20, to prove that he had enjoyed possession during that time.

And an account of the Collections made by Appellant of which Respondent now sought recovery as unauthorized Exactions under Appellant's bad Title, Rupees 1,491,-3-12½.

His next exhibit was copy of a letter received by him from Gopal Rao Bapoojee at Poona, in answer to one received from Respondent and quoted in this reply, setting forth his case for the opinion of the Shastrees of that city, and stating fairly Appellant's counterplea, " that the Widow should only have " received a maintenance, leaving Bulwunt Rao's inheritance " to be divided equally between the two other Brothers, instead " of its being all secured by the one brother among his own " Descendants by means of his own Son's adoption." From this answer it appeared, that the writer having applied to the Shastree attached to the Office of the Collector, was informed by him that on a former occasion the Collector had by Proclamation collected all the Shastrees of Poona, to whom he put the Question, if a Widow, whether Brahmun, Shoodr, or other, could, without her husband's order, after his death, adopt a son, or not? That the Shastrees, to the number of 250, had informed the Collector that a widow was permitted to do so by the Shastr, and that the two adoptions which had taken place in the Mankur family, were therefore perfectly legal.

Three witnesses were called by Respondent in support of his case, and they proved generally the act of Respondent's adoption, and that Respondent performed the funeral Rites of Bulwunt Rao, and that Gunga Baee still lived under Respondent's care.

The

The Court, stating the case to the Shastree, asked whether the adoption of Respondent would hold good under the Hindoo Law, and if so, whether the Respondent, as adopted Son, would succeed to Khunde Rao's Estate? Whether it would be necessary for him to wait for Gunga Baee's death before he could sue for the Estate, or not? and whether, he and his adoptive Mother living together, he could sue alone? The Shastree said, The widow could adopt a Son after her husband's death, (1) and on his adoption, such son might and would claim the Estate of the deceased, even during the widow's life, whether they lived together or not. (2)

The Court held Respondent to have satisfactorily established the fact of his being adopted Son of Gunga Baee, widow of Khunde Rao. Such adoption being by the exposition of the Law Officer perfectly legal, and Respondent being by the same authority declared the Legal Heir of Khunde Rao, the Court decreed to him the property of the latter, consisting of one sixth share of the village Khurowlee, inherited by Khunde Rao from his Father Govind Rao, and as it was further proved to the satisfaction of the Court, that Appellant had unjustly enjoyed for three years its produce amounting to more than Respondent claimed, Rupees 1,000 was adjudged to him in addition to the restoration of the Estate, Appellant bearing Costs.

Decree 13th June 1820.

The Appeal was filed originally in the Provincial Court, as No. 810, and transferred to the File of the Sudur Udalut. The first point of Appeal, was that the notice prescribed by the Regulations for a person suffering Judgment to go by default had not been served upon him, and that had the Suit laid over a short time longer, he should have been present to defend it.

Sudur Udalut. *Sittings at Malwan before* J. Sutherland, *Third Judge.*

The Court took up the case on this ground, and examining, the

(1) Vide Note (3) to Bombay Cases No. 43.

(2) Succeeding by adoption to the rights of a lawfully begotten son.

the Record, found that it was filed on the 2d May 1820. Summons issued on the 3d to Appellant to appear and defend the suit, of which the first hearing was fixed for the 27th of the month. On the 25th Appellant executed the usual security Bond. On the 12th June the case was first heard, and on the 13th Judgment was pronounced. Thus the case was filed and decided within a period of forty days, though Appellant's place of residence was upwards of a hundred Kos from Malwan (then the seat of the Zilla Court), and no second notice, as prescribed for all cases of like default, by Section 10th Regulation 2d of 1800, was issued.

The Sitting Judge conceived that full opportunity was not granted to Appellant to defend his Suit, and that Appellant should therefore be permitted to defend the Suit in a trial "de novo," which would be the means of removing a doubt occurring to the Sitting Judge "whether new evidence and arguments of an Appellant should have weight in Appeal when "he neglected to produce the same before the Zilla Court in an "exparte case?" The case was referred to a competent Court, with a recommendation that an Interlocutory Decree should be passed, directing the Zilla Judge to proceed in the same as if no Decree had been passed, allowing Appellant to enter his pleadings and proceed "de novo."—

Competent Court, J. Elphinston, *Chief Judge.* J. Romer, *2d Judge.* Interlocutory Decree 5th May 1821. Suit revised in the Zilla Court.

The Court concurring in the Third Judge's view of the case, passed an Interlocutory Decree to the effect proposed.

Appellant pleaded in answer to the original plaint that Dajee Rao and Govind Rao were only half Brothers, and that the latter divided the Family Estate with the Son of the former, and when Vyunkut Rao's Widow was about to adopt Chimnajee as a Son, Respondent interfered to prevent it, and got an order from the Sooba, but Mulhar Rao his Brother, determining to be stopped by nothing from his Schemes, completed the adoption of his Son

by

by the Widow. He was summoned to Poona to answer for this act, committed whilst the Estate of the deceased was in attachment by the Government, and this fact would shew Respondent's intentions in so clearly admitting Chimajee Rao in his Plaint to be rightful owner of half the village. He next denied that himself and Brothers had ever separated their interests, or passed the Deeds of Release exhibited by Respondent. Even whilst a Punchayut was pending at Poona to decide upon the adoption of Chimajee Rao by Vyunkut Rao's Widow, Mulhar Rao, pretending he had to celebrate the Wedding of one of his children, got leave to come into the Konkun, and then and there actually gave Respondent, his Eldest Son, to be adopted for Bulwunt Rao, whilst Appellant was busy with the Punchayut. On hearing of it he complained to the Surkar, which issued an order to the Mamlutdar to attach half the village, and leave Appellant in possession of half. He said that Mulhar Rao himself performed Bulwunt Rao's funeral, which he would not have done had he previously given Respondent in adoption. He added that Mulhar Rao had only two Sons, and not three, as Respondent had shewn.

Respondent again urged, after denying this answer to be true, that with respect to his own adoption, it was performed actually in Appellant's presence, and that he himself assisted as Chief Mourner at Bulwunt Rao's funeral Rites, but falling sick within the ten days of Mourning, another person acted for him, though he in person performed the Supinda Kurun on the 12th day when Appellant also was present. All the ceremonies (Sohula) of adoption were duly performed in presence of the Government Officers of the district and he reminded the Court that Appellant had clearly admitted the fact. He positively declared that Narayun Rao, the third son, was still at home with their Father. He named the year Arba Miyaten wu Uluf A. D. 1804, as that in which the separation actually took place, and the very share which Bulwunt Rao then obtained, including

including various Huks and offices in the Dukhun was with the exception of his share of Khurowlee, all now in his possession.

Appellant again averred that Mulhar Rao, and not Respondent, performed the funeral Rites of Bulwunt Rao.

He then produced nine exhibits.

The first was an order from Wamun Rao Govind Soobedar, to the Village, dated 21st Suffur Sittu Ashur or 10th January 1816 for putting Appellant in possession of half of the Village, and his rights as Eldest of the Family, denouncing at the same time Respondent's adoption as contrary to Law.

Next, a Letter from the same Soobedar to Mulhar Rao, upbraiding him with his irregular proceedings in giving away both his Sons in defiance of the Law, and the remonstrances of his Elder brother, Appellant, against the measure, and informing him that Appellant must have the management of the half Village, and he would not be allowed to interfere in any way.

Accounts for the years Sittu, Subba, and Summan Ashur, for the Village, in the name of the Government, as under Attachment.

Four Orders from the Collector at Bankot, and the Sur Kumavisdar of the Purgunna, relating to the dispute, and possession of the Village, and complaints of produce having been levied by Respondent, who was ordered to refund it. Two witnesses out of three called by Appellant gave evidence for him.

One of them, a Sepoy, proved that Appellant personally warned Vyunkut Rao's widow, and Respondent's Father, and the officiating Priest, against performing Chimajee's adoption. Also that Mulhar Rao came from Poona, performed Respondent's adoption, and was afterwards carried off again by four Sepoys from Poona. That Mulhar Rao performed Bulwunt Rao's funeral Rites, and that Mulhar Rao had only two sons.

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The other witness, a person from another Purgunna, could speak only to a dispute having occurred between Appellant and Mulhar Rao when Chimnajee, his younger son, was adopted.

The Court required the Shastrees to state how the Laws of the Shastr affected Respondent's adoption, he being the Eldest of only two Sons? They said, A woman also is permitted to take a son in adoption according to the Muyookhu in the Vidhee Prukaru, where Shuonuk Rushee says "I affirm that the act of "adopting a son is one of high merit. Let the person who is "childless, or whose son is dead, make a Fast to obtain one, at "the same time giving away clothes, a pair of Earrings, a Tur-"ban, and a Ring, to his Family Priest, being a Religious "man who worships Vishnoo, and reads the Vedus. Let him "then take in his hands, both large and small Koosha, or sa-"crificial Grass, with a small twig of the Palash tree" (with the leaves of which all Hindoos, but Brahmuns without exception, make the plates off which they eat their food ("and send "for his Relations, and the people of his Cast, and give them a "Feast and another to Brahmuns. Let him make a Burnt sa-"crifice of Ghee, and going to the person whose son he intends "to adopt, demand him of him. Then taking the boy in his "hands (or by the hands) let him smell his forehead and put "on him ornaments, and clothes, saying "this is the very Sha-"dow of a Son to me." Let him then with Dancing and sing-"ing, and playing of music, and receiving the Blessings of "Brahmuns, in this manner bring the Child into his own house, "and there make another Burnt sacrifice, and perform all the "ceremonies that remain to be done." However, when a Nephew is to be adopted, it is immaterial whether the Burnt sacrifice be made or not, for Yumu says, "It is not expressly "required that Burnt sacrifice and other ceremonies should be "performed on adopting the son of a daughter, or of a Bro-"ther, for it is accomplished in those cases, by word of mouth "alone." (Wak Danu, a verbal Gift.)

The

The Court again required them to say, whether Mulhar Rao having only two Sons, could properly give them both away in adoption, one to the Widow of his own Brother, the other to that of his second Cousin?

The Shastrees again replied, The sin lies in that case with the person giving and not with the person receiving, in adoption a child whose adoption is not permitted by Law. The sin in the giver consists in his giving away both his sons, and leaving himself childless. The man who has several, must yet reserve his Eldest, and youngest, sons, for himself, and give any other. For the Mitakshura says, leaf 54th, page 1st, line 5th, "Nor, though a "numerous progeny exist, should an eldest son be given, for he "chiefly fulfils the office of a son, as is shewn by the following "text" (of Munoo. Chap. 9th, v. 106) "By the eldest son "as soon as born, a man becomes the father of male issue," (Pootree Cole. Mit. 310.) There is no mention of the receiver.

They were then asked to state distinctly whether Mulhar Rao could under the Shastr give Respondent, his Eldest son, to be adopted as the son of Bulwunt Rao?

Their answer was as follows. 'If, among several Brothers 'of the whole blood, one have a son born, Menu (9th 182) 'pronounces them all Fathers of a male child by means of that 'son; so that, if such Nephew would be the heir, the Un-'cles have no power to adopt sons.' From these words of Munoo, it appears that there is no sin in thus receiving the eldest son in this case. Do not say, it is positively written in the Shastr that the Eldest son out of many must not be given, and how then can he be given? for the sin of giving the Eldest son lies with the giver, but none attaches to the receiver. Do not either say, that an act of adoption cannot be performed at the time of death; for though at that time the adoption, as enjoined by the Shastr, had not been performed, yet he (about to be adopted) might perform the ceremonies subsequent to the

other's

other's death. (3) Again, it is plain from the words of Yumu, that the performance of Burnt sacrifice and other ceremonies, on the adoption of a brother's son is not expressly demanded, for thus he says "The Burnt sacrifice at the adoption of a Daughter's, or of a Brother's, son is not enjoined particularly, for "it is completed by word of mouth." Wherefore, on the point of death, a Brother's son may be adopted as a son, either with or without the Burnt sacrifice. As therefore the Eldest son had performed the funeral ceremonies of his adoptive Father and was afterwards adopted under the Rules of the Shastr, there is not to be found any authority for declaring his adoption null. "That which has been done, cannot be undone," and the injunction of the Shastr, that an only son shall not be given, is thereby rendered of no avail, because the *eldest* son was first given.

The Court observed that by this exposition the circumstance of Mulhar Rao having parted with his only two Sons for the purpose of adoption, was not authorized by the Laws of the Shastr, except under particular circumstances. A person having only two Sons was declared incompetent to part with either, but it was not laid down whether a Son having been so adopted, could inherit the patrimony of those who adopted him. It was however apparently the Law, that the prohibition lay against the party giving, not against the party receiving; and that the adoption having once taken place, it could not be reversed; and it seemed the intent and meaning of the Law that in the present case of Respondent's adoption by Gunga Baee, it was allowable, he being the son of her husband's Brother, as a means of preserving the life of the latter, by restraining her from burning

(3) The Mirnuye Sindhoo in the third Book, on the Right of performing Shradh for one leaving no son, either begotten or adopted, declares, That after the wife comes the brother, and his son, in order. The observation does not apply generally to all adoptions, but to the Respondent in this case, as the brother's son.

burning on her husband's funeral pile. The Court conceived it to be under these circumstances a legal adoption, and Respondent to have a right to the property inherited thereby from Bulwunt Rao, alias Khunde Rao, and the sixth of the village sued for was awarded to him; but as it appeared to be property which had been a constant source of litigation; moreover as Gunga Baee appeared to have been supported on the Usufruct, nothing on that score, with retrospective effect, was decreed to Respondent, who had his Costs allowed.

Decree 7th Dec. 1821.

Sudur Udalut, *Sittings resumed at Rutnagiree before.* T. Barnard, *4th Judge.*

The rehearing of the case having been postponed by the late Fourth Judge for information respecting the Interlocutory Decree, was now resumed at the second Session of 1822, the proceedings, of the former and present trial being connected by supplemental Pleadings in Appeal. The Appellant took exception to the Zilla Decree, after generally stating the grounds taken in his pleadings in the Zilla Court, first that it gave to Respondent to Appellant's detriment, all the advantages proposed by the grasping spirit of Mulhar Rao, which was evidently to secure by a skilful disposition of his only two Sons in adoption, five sixths of the whole Estate to the Heirs of his own body, leaving him, his Brother, with only one sixth, though entitled to share it equally with himself; secondly that the Suttee, on which the Zilla Judge dwelt, was fictitious and never heard of at the time of Bulwunt Rao's death. Next, that the Shastree's exposition of the law was incorrect both in the letter and spirit, and was absurd on the face of it, maintaining, as legal, an act which it stigmatized as improper. The Court observed, that though the letter exhibited by Appellant as from the Soobedar to Respondent's father, and that to the Patel, both found fault with the adoption, yet neither signified any formal reversal of it. But with respect to the Appellant's objection to the exposition of the Law the sitting Judge was desirous of having the point established by the Sudur Udalut, after taking the advice within its reach. The reference was therefore made to Surat, copies

of

of the Vyuvusthas of the Zilla Law Officers being also forwarded, the Sitting Judge observing that he was guided on this occasion by the exigence of expediency, and the constitution of the Zilla Courts, since no positive enactment existed respecting the event which gave rise to it.

The opinion of the Sudur Udalut Law officers was forwarded, without comment, to the Judge of the Zilla, who at the next Session, the first of 1823, laid it before the Sitting Judge.

The Shastrees of the Sudur Udalut had been asked to state, quoting also the Texts of the Shastr, what was enjoined both on giving and receiving in adoption, and in the event of a Son being adopted without due regard to its ordinances, whether it could be reversed or not?

Upon the second of the answers given on the new trial by the Zilla Shastrees, they said, The giving away of the only two sons Mulhar Rao had was improper, because as it is said (by Munoo Ch. 9th v. 106 before quoted by the Zilla Shastrees,) " By the Eldest at the moment of his birth the father who has " begotten that son, discharges his debt to his own progenitors;" and by giving away his Eldest son he left himself Childless. Before committing this fault he should have reflected, but if he did it without reflection he cannot take him back again. For it is thus said, " That which is done, cannot by an hundred " negatives be undone," and from this it is clear, that what is done according to the Forms of the Vedu, cannot be annulled. Again it is written, " Even when there are many Sons, the " youngest shall not be given," but although it is thus forbidden, still it is the universal practise of the world for the youngest of two sons to be given.

On the last answer they said, a Widow can by her husband's injunction adopt a son, but not without it, but the prohibition is meant against her taking any other person, when the son of her husband's Brother exists, whom she may adopt even without such injunction;

injunction; for from the words, (of Munoo Ch. 19th v. 182. quoted by the Zilla Shastrees) found in the Mitakshura, Book second, leaf 55th, page 1st, line 3d, it appears, that even without the injunction of her husband, a Widow may adopt the son, either of her husband's eldest, or youngest, Brother.

Upon the first of those three Answers given in the Zilla Court on the new trial, they said, what the Zilla Shastree has written in answer to the third (first) question is agreeable to the Shastr, and it is according to this Form that sons are adopted in the world.

In answer to the Court's own question they replied, if in taking one of the persons permitted by the Shastr as a son, the only mistake lay in taking the Eldest or youngest, the adoption could not then be annulled, for thus says Vusistha in the Mitakshura, (Book second, leaf 54th, page 2d, line 1st) "when a son "has been adopted, if a legitimate son" Ourusu *Pootru*, "be "afterwards born, the given (adopted) son shares a fourth "part," and the Mitakshura in the 13th line of the same page afterwards says, "a given son must never claim the family or "estate of his natural father" (Cole. Mit. 318 and Munoo Ch. 9th v. 142) From which it appears that an adoption can never be annulled. (4)

The Sitting Judge, finding this opinion in accordance with that given in the Zilla Court, affirmed the Decree of that Court with Costs against Appellant.

Note. The proceedings of the Collector of Poona, alluded to in the letter exhibited by Respondent, are subjoined to this case, as containing the officially recorded opinions of many learned Shastrees upon the great Question of adoption, some of them being considered to rank among the highest living authorities on Hindoo Law on this side of India.

Captain

4) Vide Bombay Cases No. 42.

Captain Robertson says, " The Questions were put to the " assembly of Shastrees very shortly after our occupation of " Poona. From Political motives, Bajee Rao declared the " adoption of a son by a Widow without the orders of her hus" band to be illegal. His Brother Chimnajee Apa was adopted " by Yuswuda Baee, the Widow of Madhow Rao Siwaee, through " the influence of Purusram Bhao (the Meerujkur Putwur- " dhun); but when Bajee Rao, by prevailing on Sindeea to " side with him, acquired the ascendancy at Poona, he consi- " dered himself the best representative of his Cousin (the late " Peshwa Nadhow Rao Siwaee), and declared his brother's " adoption illegal, on the grounds that Yuswuda Baee could " not adopt a Son without her husband's orders to that effect. " Bajee Rao during his sovereignty never would admit any but " the principle he had established, though he did permit one or " two exceptions." The whole assembly may be held to have concurred in the opinions of the nine Shastrees, who gave in the following answers, as the leaders of it.

Questions.	*Trimbuk Shastree Raeedrooghur.*	*Hur Bhut Kasseekur.*	*Sukharam Shastree Nuggurkur.*	*Chintamun Shastree Dikshit Apte.*	*Trivengul Acharya Shastree.*	*Raghuvacharya, Principal of the Poona College.*	*Purusram Shastree Athule.*	*Ram, alias Ramchundur, Shastree Kurhadkur.*	*Chintamun Shastree Lele attached to the Collector.*
First, If a person, who has lost his father and has been in possession of his Estate from his infancy, but is incapable, from any disease or natural defect, of begetting children, wish to adopt a son, after what age may he do so?	I have seen no passage in the Shastr, fixing any particular time of life.	He might adopt a son, when of the age of 18 or 20 years.	After trying all means to remove the disease, if it appear incurable, he may then adopt a son, when his marriage has proved barren.	The first and best mode is to take a child of one's own family, who has not performed the Jat kurn and other acts, and is under five years of age. The next in the degrees of adoption, is to take one who has passed the Choora kurn (shaving the infantine hairs away at 3 years) but has not been invested with the string (which is put on either at 5 or 8 years old.) The last degree of adoption, is when the parents being without remedy, take as a son one whose marriage even has been performed. The child of another family holding different tenets of religion may not be adopted after performance of the Choora kurn.	I have not met in the Shastr with a passage laying down the time of life. The adoption of a Son may be with the mutual consent of man and wife, or may be made by the husband alone.	If all are satisfied that the disease can in no way be removed, then at that time a son may be adopted. If the disease be not so decidedly incurable, let him adopt in his old age.	Such a person may adopt a son when he pleases.	The sick man must do his best to remove the disease, and when it becomes decidedly incurable, he may adopt a Son.	When the person has attained the age of 16 without retaining any hopes of offspring, he may adopt a son.
Question Second. In adopting a son, should it be done with mutual consent of the husband and wife, or can the husband alone determine on it?	The husband must determine upon the adoption.	It is better that both should agree, but if this is not practicable, the husband has full power to do it alone.	If the husband and wife are both present, it should be done with the consent of both, but if the wife is not present, the husband alone may adopt.	If the wife have arrived at puberty let them try to be get a child. If by this a son is not produced, let them try all means divine and human for ten years, and if that fail, then, if the husband be rich and robust enough, let him marry a second time, and, if even in this attempt he should not be successful, let them (all) unite in adopting a son, and if the wife do not agree, still the husband alone may adopt. A married woman may adopt with her husband's order.	The adoption must be made by the husband.	The best adoption is that performed with the consent both of husband & wife, but the husband may perform it.	It may be made by the husband and wife, or by the husband alone.	It may be done by the mutual consent of the husband and wife, or by the husband alone.	If the woman be capable of reflection, she and her husband should consult together on the subject.

Question Third. Can a woman adopt a son after her husband's death, without his order for the purpose, given on his death-bed?	In the Mitakshura and other ancient writings nothing is to be found authorizing a widow to adopt a son without her husband's order. Nund Pundit author of the Dutt mimoonsa and other Books, says distinctly, "that a "widow cannot a-"dopt a son without "the orders of her "husband." The practice of almost all countries is conformable to this Rule of our ancestors. The Suonskar Kuwustoobh, the Muyookh and other books of Muharatta Pundits, declare that a widow may adopt a son, and the Muharatta practice is founded on this Rule. Wherefore all good customs of every country ought to be upheld.	It may be done, and it is the best way, by the consent of the Father and other relations within the seventh degree, and of the Cast. It is also done without any order or consent at all.	It is better that the husband's commands should have been received, but the widow may do it without.	The Widow should adopt with her husband's order. But she may adopt without it provided her husband did not say he wished to have no son adopted.	In the *Dult* Mimoonsh and other Books the adoption without the husband's order is forbidden, and the old Custom of many Countries is agreeable to this. The Murhattas have established in the Suonskar Kuwustoobh and Muyookh, that a Widow may adopt a Son without any order from her husband and this has long been acted upon, wherefore the Customs that have long existed must be kept up.	*Authors differ* on this point, some saying that a Widow may, and others that she may not, adopt a Son without the order of her husband.	*I have answered* this above. It is written in the Kuwustoobh and other Books that a Widow may adopt a son, without the order of her husband.	*A Widow may* adopt a Son whether she have received her husband's order to do so or not.	*A Widow may* adopt a Son whether by the orders of her husband or not.
Question Fourth. In the event of the adopted son being left an orphan whilst young, who should act as Guardian to his Estate? Whether his own natural father and mother, or the family of his adoptive father?	Any relation in the adopting family being a confidential and upright man, may act as Guardian, and if no such exist, then one of the blood, or natural, relations of the adopted boy.	Provided the Relations of the adopting parents be worthy of the trust, they must take care of the boy. But if not, then the boy's own father and mother must take charge of his Estate.	Whoever is likely to act well by the boy should have charge of him. It does not signify who that person may be.	Any one of the Family of the adoptor who may be trustworthy and confidential, or one of his natural relations similarly qualified, may have charge of the boy.	The same exactly as Trimbuk Shastrec.	Let any one of them who is fit for the charge, be put in trust with the consent of the rest.	Any one of them who is trustworthy may be put in charge to take such care of the property that it may come safe into the boy's hands when of age.	Until the boy is of age to take care of his Estate himself, the Relations of the adoptor must do it or any other person named by the adoptor as Guardian before his death.	Any trustworthy relation of the adoptor may take care of the Estate, or if none such exist, then the Prince.
Question Fifth. If the child's adoptive father die when he is young, will the Widow of his adoptive father have charge of him, or the relations of his father?	The right person to have charge of him is the adoptive mother, and if she cannot manage it properly by herself, she may call in a confidential and trustworthy person to her assistance.	The Widow must protect the child so long as she does not go wrong, when the relations of the deceased must take charge.	The adoptive mother must take care of him, and if she do not, then the relations must.	If the mother be fit to take care of him, she may do it herself.	The Mother must protect him, and if she cannot a trustworthy and confidential person must do it under her guidance.	The most proper person is the Widow, but if she do not do it, the Relations must.	She must manage every thing.	The Mother must take charge of him until he be grown up, and if she do not, then the Relations must.	The adoptive mother must bring him up, take care of him like the child of her Womb, until he be grown up.

Question Sixth. From what year of his age may the adopted son assume the management of his Estate?	Whenever he is decidedly fit to do so.	After he has attained the age of 18 or 20 years.	The estate should be resigned to him whenever he is acquainted with the nature of business.	As soon as he has been initiated in the business of life.	From the time that he proves himself fit to take care of it.	No particular age is fixed; as soon as he begins to take an interest in dealings, he may be intrusted with it.	He may take charge of it as soon as he is capable of doing so.	He may take charge as soon as he is fit to do so.	After he has attained the age of 20 years.
Question Seventh. When a man wishes to adopt a son, must he take one from among his own relations, or any one that he chooses?	The proper person to adopt is the son of his own brother. If he cannot get him, then one within the seventh degree of his own *blood* relations on the Father's side (Sugotr Supinda.) If such an one cannot be found, then the same on the mother's side, (Usugotr Supinda), and in default of them, the Sugotr Usupinda, blood relations on the father's side beyond the 7th degree.	As long as he can procure one of his own relations within the seventh degree, (Sugotr) he must not take any other.	The most correct is to take one of a brother's sons if he have many. If not to be found, then a Sugotr Supinda. Next an Usugotr Supinda and next Usupinda Sugotr. After failing with all these, let him adopt one of another family, always excepting the son of a daughter and of a Sister which are permitted to Shoodrus alone.	He must adopt one of his own cast, the son but neither the eldest nor youngest of his next youngest brother, and of good abilities. And if no such son exists, he may even take the son of his eldest brother, and after that his nearest relation among the Supinda Sugotr. Next the Usugotr Supinda, and then the Usupinda Sugotr, and last of all the Usupinda Usugotr with the exception of the Daughters' and Sister's Sons, and the Virood Sumbund [one whose mother is within the degrees of consanguinity forbidden for marriage with the adopting father, which would involve penance as for a fictitious or supposed incest committed by his becoming father to her son] and he must be younger than the adoptor, and fit for the end proposed in adopting him.	Expressed in the very same words as the answer of Trimbuk Shastree.	If he can get the Son of his own brother, he should adopt him. If not then a Supinda Sugotr, next an Usugotr Supinda. If not to be found, he may then take one only Sugotr [Usupinda] and in default of all these, *Bhin Gotr* one *unrelated.*	If his relations are willing to give one of their Children in adoption, he should not seek for one elsewhere.	The first rank in adoptions is that of the Son of a full Brother. The next, of a Supinda Sugotr. Then of an Usupinda Sugotr; next, of one *unrelated,* excepting the Son of a daughter or of a Sister. When the Relations will not give a Son recourse must be had to persons not related.	He should first try to obtain the Son of a relation, but if not successful, he may take any other proper person.
Question Eighth. If the relations will not give up one of their Sons, may he adopt the son of any other person?	Yes.	Yes.	Not answered.	Yes.	Yes.	Yes.	If the (near) relations will not give up one of their Sons, he should take a Son of a Sugotr, or of a *Pur Gotr no relation* provided that the boy have not yet been invested with the Brahminical string.	Yes.	Yes.

Question Ninth. In the event of there being four brothers, and all of them having offered to give up a son for adoption, from which, of all of them, is he to be received?	The adoptor may choose whichever of their sons he pleases.	He may take any one of their sons who is qualified, on whom he likes to fix his choice.	The Same.	The answer to this was given in my 7th.	Whichever the adoptor has fixed his choice upon.	He may adopt whichever of them is qualified, handsome, of good abilities, and a younger Son.—However, an eldest Son must not be adopted, nor must an only Son be either given or received, and an exception is also made against the son of a Sister or daughter among Brahmuns.	The adoptor may take whichever he pleases.	He may choose any one of their Sons who is well qualified.	He may take whichever pleases him.
On Suttees. *Question First.* May a pregnant woman perform Suttee?	No.	No.	No	Not if there is any good reason to believe that she is pregnant.	No.	Not answered.	No.	No.	Not answered.
Question Second. What do you say of a Suttee where a Widow is induced, against her will, by intoxicating drugs, or obliged by main force, to burn herself?	Nothing of the kind should be done.	It must not be done.	It must not be done by force.	If the widow cannot bring herself to burn, she should live as a Widow, and must not be forcibly made to burn by any means.	It must not be done.	Not answered.	It must not be done against her will.	Not answered.	Not answered.
Question Third. May a Women burn who has not commenced her courses?	No.	No.	No.	No.	No.	Not answered.	It is not proper.	No.	Not answered.

N°. 15.

GIRDHURLAL BRIJLAL,..... APPELLANT,

VERSUS

MIHIRWANJEE and DADA BHAEE, Sons of KHOORSHEDJEE,..... } RESPONDENTS.

Broach Udalut.
T. Barnard, *Judge.*

RESPONDENTS were the complainants in the Zilla Court, filing a Suit on the 10th July 1820, to recover from Appellant Rupees 925, balance of principal and interest of an Account Current, adjusted in A. S. 1865 or A. D. 1809 by Appellant, who had then signed it in acknowledgment of its being justly due, but now refused to pay it.

A merchant honoring the draft of a constituent in the amount of the drawer's credit in his books, by payment of that amount only and no more, is not liable for the balance of the draft unpaid, to the person in whose favor it is drawn.

Appellant in answer denied that any thing was now due by him to Respondents, and stated that they had omitted to give him credit for two Items, one of Rupees 300-3-31. Brokerage due to him on account purchase of Cotton made for Respondents, the other, of Rupees 100 balance of a draft for Rupees 500 given him by one Hansjee Narayun on Respondent's Father who had only paid him Rupees 400 of it, putting off payment of the balance until settlement of their account with Hansjee. He complained also that he had not been allowed interest in the account. Respondents replied that Appellant having signed the Sameedustkhut, or adjusted account, could now take no exceptions to it. With respect to the Brokerage, they asked why, if the claim for it were well founded, Appellant had not claimed deduction for it before signing the balance against himself, but the fact was, that he was the actual Seller of the Cotton and not Broker. Respecting the balance of the draft for Rupees 500, their Father, when the Draft was presented, referred to his Books, and finding that the Drawer, Hansjee, stood only credited therein for Rupees 400, would honor the Draft in that amount only, telling Appellant he might have it back without receiving any part of the amount, if he chose.

But

But Appellant then took the Rupees 400, as tendered, in which amount he received credit accordingly.

The Court remarked that in the account exhibited by Respondents, which was an account Current for certain quantities of Cotton sold by Appellant to Respondents' Father, this Item Rupees 400, was entered as " in part the other for Rupees 500," without specifying the reason of the balance remaining unpaid. The point of Brokerage would be easily settled by ascertaining whether Appellant charged Respondents the same price for the Cotton, as he had bought it at, or a greater, and the actual Sellers would shew this. Respondents after inspecting Appellant's account, said the price charged them by Appellant was the same as that shewn in his account as that at which he had bought the Cotton. Appellant was then called on by the Court to prove that he acted as a Broker.

The evidence of two witnesses taken by Commission at Surat for this purpose, went to shew that Appellant sometimes did business as a Broker; that is, these persons were in the habits of commissioning Cotton from Broach, and employed Appellant occasionally for the purpose, allowing the Agent employed Rupee 1 per Cent for his trouble. One of Respondents' Goomashtas was called by them, and being asked whether Appellant had to his knowledge acted as Broker, could not speak to it. Another said that when Appellant in A. S. 1865 came to settle Accounts with the house, some words arose between him and Khoorshedjee after passing the Sameedustkhut respecting interest, which Khoorshedjee then wished to calculate, but Appellant said it should be left till another time, and Khoorshedjee allowed him then to go away.

The Court held that Appellant had not proved his claim to off sett on account of the Agency Fees, since he had not adduced the very necessary evidence of the real Sellers. But the Item of Rupees 100, appeared to be really due to Appellant by Respondents' own Account. Deduction of this sum, with its interest

Decree 14th Sept. 1820.

rest Rupees 100 being therefore allowed to Appellant, the balance of the amount sued for was awarded to Respondents with Costs in proportion.

Sudur Udalut, Sitting Judge. J. Romer, 2d Judge.

The Appellant further agitated this Suit in Appeal to obtain remission for the Brokerage disallowed in the Zilla Court, and Respondents took exception on their part, by way of Appeal, against that part of the Decree which gave Appellant remission for Rupees 200 principal and interest on Account of the short payment on Hansjee's Draft. No new points arose in the pleadings, nor was any other evidence adduced on either side. The Court concurred with the Zilla Judge in finding that there was no proof of the Appellant being entitled to charge Dulalee, or Brokerage, in his Account with the Respondents' Father. Appellant for any thing shewn to the contrary therein, must be taken as the owner of the goods, since there was no ground for considering him as the Broker who furnished them, neither was this elsewhere proved. So much of the Judge's Decree therefore as found for the Balance with interest brought forward against Appellant, ought to be affirmed. But he had been allowed an offset of Rupees 100 on Account of a short credit of so much in a transfer of five hundred Rupees made by Hansjee Narayun, on Respondent's Father, in Appellant's favor. The latter had himself only taken Credit for the sum of four hundred Rupees in the Account Current, and Respondents alleged that this sum was the amount of a debt due by their Father to Hansjee, beyond which the transfer could not be honored, as in fact Appellant had himself acknowledged, by taking credit for only four hundred Rupees. The Court being of opinion that the Decree of the Zilla Judge required amendment to the extent of leaving out so much of the Decree as allowed a deduction of this Rupees 100 with interest from the amount Balance due by Appellant, referred the case to a Court competent to amend the Decree accordingly.

Competent Court. J. Elphinston, Chief Judge.

The Court fully concurred in the view taken of the case by the second Judge, and considered the sum of 206 Rupees to be justly

justly due by Appellant in addition to the amount adjudged against him. The Court did not conceive it to be regular to adjudge this amount against him, because Respondents had not brought their Appeal into the Court, but as they had stated in answer that they could not do so on account of the smallness of the sum, the Court was disposed to grant that they were not aware that at the period of admitting the Appeal the new constitution of the Sudur Udalut allowed of appeals from the original decisions of Zilla Judges of any amount. Feeling disinclined to put the parties to additional waste of time and money in a matter so clear, the Court resolved to include the Item in the present Decree, but awarding neither Costs nor Interest (in Appeal) on the sum.

J. Sutherland, *Third Judge*.

Decree 19th July 1821.

N°. 16.

SHEODAS KISHUNDAS,.....*APPELLANT*,

VERSUS

JUGJEEVUN NUNDRAM,.....*RESPONDENT*.

RESPONDENT on the 28th June 1820, filed a Suit against Appellant for Rupees 1898-3-0 principal and Interest, on a Bond executed by him for Rupees 1,398-0-0 in A. S. 1872, or A. D. 1816, to Respondent's Father, since dead. On the 1st July the Nazir reported that Appellant was gone to Bombay; notice was accordingly fixed upon his house citing him to appear, and failing so to do, the suit was brought on for hearing on the 9th November, and on the 13th Judgment was given exparte in favor of Respondent upon the Bond, which he exhibited with an account up to the 14th Asvin Vud. 1871.

Surat Udalut, W. A. Jones, *Acting Judge*.

Suit filed by Respondent for the amount principal and Interest of a Bond passed to him for a balance of accounts of former years.

Decreed as sued for by the Zilla Judge.

Sitting Judge of the Sudur Udalut, proposed it reversal on the ground of error in the dates of the Bond.

Appellant

Error accounted for by the full Court under the Hindoo computation of time, and the Zilla Decree affirmed.
Decree 13th Nov. 1820.
Sudur Udalut,
Sitting Judge.
J. Sutherland,
Third Judge.

Appellant in his Petition of Appeal, filed on the 23d February 1821, claimed a further investigation, on the grounds of the impossibility of his being able to appear and defend the suit in the first instance, having gone to Bombay to prosecute a cause of his own before the Sudur Udalut in Bombay.

The Court observed, that judgment having been given upon the documents exhibited by Respondent, without any sort of proof having been taken to their authenticity, though Durkhasts were filed for the witnesses, the case had not been sufficiently investigated, and must havvebeen taken up before its turn on the File, which prevented Appellant from being able to defend it, as it was clear he could otherwise have done. The Sitting Judge therefore referred the case to a Court competent to pass an Interlocutory decree for remanding the suit, as the Court thought advisable, to the Zilla Court, and allowing Appellant to defend it there "de novo" entering his pleadings as if he had never made default. The other Judges concurred in this opinion, and passed an Interlocutory Decree to that effect.

Competent Court,
J. Elphinston,
Chief Judge.
J. Romer,
2d Judge.
Interlocutory Decree 5th May 1821.

Suit Revised,
G. W. Anderson,
Judge.

The Appellant answered the claim, by totally denying either execution of the Bond, or receipt of its value, and asserted that it was made up between Respondent, and his own old antagonist in the Bombay Sudur Udalut. He likewise urged, that Respondent had two Brothers, and could not therefore sue, without their participation, for a debt due to their Father. Further he remarked, that the Bond was dated Wednesday 1st Kartik Sood A. S. 1872, or 2nd November 1815, and he reminded the Court that this day called "Juohur Putola," or "new year's day," was kept sacred from all transactions in the way of business; besides, that it did not fall on a Wednesday, but on a Thursday, in the year in question.

Respondent

Respondent again urged that since the Suit had been referred to the Udalut, Appellant and he had agreed by a Paper regularly drawn up between them to refer the matter to Peshtonjee Wukeel, who had the paper in his possession, and he prayed that this fact might be investigated. The Bond on which Appellant sued, was as follows. Wednesday 1st (Parva) Kartik Sood, A. S. 1872, Sheodas Kuhandas writes to Nundram Umbaram, that he has received from him the sum of Rupees 1398, in hard cash, and which he acknowledges himself bound to repay in his own proper person, interest becoming due upon the Principal, at the rate of 10 anas per Cent per month, which, with the principal, he will faithfully repay. This note is passed after receipt of the Cash. In witness whereof I sign it,

SHEODAS KUHANDAS,

Witnesses, Rupees 1398.

TRIBHUWANRAM JEEVUNRAM,

BHUGWAN RUTTONJEE.

The above witnesses deposed to the Bond having been executed by Appellant in liquidation of a Sameedustkhut of the year before. They both agreed in saying that it was written in the preceding month, Asvin, four or five days before the Diwalee, (new year's Eve, when Bankruptcies "Diwale," are declared.)

Peshtunjee Kala Bhaee, Wukeel of Court, stated that the parties referred this dispute among others which existed between them, for his decision, but he had not decided it. He handed up the Ikhtiyar nama, or agreement, executed by the parties on the 6th June 1821, "to abide by the decision of himself "and Dulputram Tooljaram, a Sirkar's Mehta, in this cause, "and respecting some other transactions then unsettled and "disputed between them."

The Court considered the note of hand proved by the evidence of the subscribing witnesses. Respondent, in order to dispose of Appellant's objection to his suing alone, prayed the Court to call

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call up his two Brothers, who, appearing in Court declared, that the present suit was instituted by their joint desire, and that it was now so continued, and that they considered Respondent in the light of a Mookhtar. The Court therefore held that the suit was well laid, and overruled Appellant's objection to its regularity, and considering the note of hand to be proved as the act and deed of the Appellant, gave judgment that he should pay its amount with interest and Costs.

Decree 5th May 1822.

Rehearing in Appeal before the Sudur Udalut,

Appellant in a Supplemental Petition remarked upon the difference between the Parol and documentary evidence, respecting the date of the Bond, repeating what he had urged in the Zilla Court respecting the day of the week; and the Court on reference to the Indian Calendar found that new year's day did in that year actually fall on a Thursday. With respect to the Arbitration, the Court recorded its opinion that had Appellant even voluntarily referred the present subject in dispute to Arbitration, it could not be taken against him, but rather in his favor, that he did not agree to the demand.

The Court could not look upon the Bond as a document that should be supported, for it purported to have been executed on new year's day, on which no business of this description is said to be transacted, and the mistake in the day of the week noted in the Bond, with the contradiction of the witnesses about the date of execution of the Bond compared with that shewn in it, warranted the Court in viewing the case with great distrust from the confusion that existed, and recording its opinion that Respondent's original claim should be thrown out, it was submitted to a competent Court.

Competent Court,
J. Romer, *Chief Judge.*
Ed. Ironside, *2d Judge.*

The Court observed, that the note was passed for the Balance of the account brought up to the 14th Asvin Vud 1871. It was dated Wednesday 1st Kartik Sood, and although it would appear to have been written at the time of settling accounts, or a few days anterior to its date, it could hardly be considered to detract from its authenticity, since the account on which it was

founded

founded was brought up to the same date as the note. On referring to the Indian Calendar, it appeared that the Dhun Terus, and Kalee Chowdus of Sumvut 1871, fell upon one and the same day, Monday. Tuesday was the Diwalee, and, Wednesday would in usual years have been the 1st of Kartik Sood 1872. But in the year in question this day was counted Umuwas, which advanced the first day of the new year to Thursday, a circumstance it was easy to suppose such persons as the parties in this suit were not previously aware of. On these grounds alone, the Court, entertaining no doubt of the truth of the subscribing witnesses' testimony, might pronounce a Judgment establishing the validity of the Bond; but Respondents had exhibited a set of account Books, in which Sameedustkhuts appeared under the Appellant's hand for a series of years, which fully satisfied the Court that the signature on the Note was that of Appellant; a Decree was therefore passed, declaring the note fully proved, and thereupon affirming the decision of the Zilla Court in favor of Respondent, including interest up to the day of payment, according to its tenor, Appellant also bearing Costs.

Decree 20th June 1820.

No. 17.

PRANNATH BHANOODUTT,.....Appellant,

VERSUS

LUKMEERAM ADITRAM,.....Respondent.

Kaira Udalut, G. W. Anderson, *Judge.*

In the case of a House sold by the owners to Respondent after redemption of it from a mortgagee, who had remortgaged it

THE Appellant filed a suit on the 16th July 1819, against Respondent for Rupees 507, amount laid out by him on a Mortgage, disavowed by Respondent. He stated in his plaint, that the common Grandfather of Thakoor Munch, haram Prubhakur, Nurbheeram Mooleshwar, and Huree Bhaee, Vireshwur, mortgaged a house of his in the village of Oomreth to Juverecdas, Grandfather of Pitambur, for Rupees 252-2, in St. 1825,

or

to Appellant, it was held under the authority of the Shastr that the owners, on receipt of an acquittance from the mortgagee were at liberty to sell the house, and that the claim of the under mortgagee for for remuneration, did not lie against the owners, but against the mortgagee from whom he derived his title.

or A. D. 1771, by two Bonds of Rupees 201, and Rupees 52-2. Juvereedas again mortgaged this house in San or "with possession" to Manukjee Chubeeldas in St. 1838, or A. D. 1781, from which time till 1842, that person held it as San, but in the next year, St. 1843, Juvereedas redeemed it, and remortgaged it to Appellant, also in San. In 1844, he again redeemed it from Appellant and remortgaged it for Rupees 201, to Appellant's Brother-in-law, Gungaram Asaram, under two Bonds. The latter person wanting to raise funds for the marriage of his daughter, applied to Appellant to take the mortgage Deeds, and advance him money for that purpose, which Appellant did. This was in St. 1852, and till St. 1865, Appellant held the house under this Title. In that year Thakoor Munchharam Prubhakur by force took the Deeds from him. In St. 1866 or A. D. 1810 Appellant agreed to a settlement by Punchayut, and Respondent then stood Security for Munchharam and received possession both of the house and Deeds, which Appellant therefore now prayed the Court to have restored to him, or grant him Rupees 507, as damages incurred by loss of the mortgage.

Respondent rested his defence on an actual sale of the Premises to himself, adding with respect to Juvereedas, that he had in his possession a Farighkhut passed by that person. Respondent also denied Appellant's account of his possession.

Appellant in reply, urged that the sale to Respondent could not be held legal when the house was disposed of without his consent as mortgagee, neither could the Farighkhut hold good when he himself actually held possession after the passing of it, and it must be considered annulled by Respondent's subsequent acts in the Punchayut. It was passed at Buroda, under compulsion exercised toward him to make him give up the house, and that on his passing this Release Respondent entered into the security to bring about a settlement by Punchayut, by his failure in which the Release depending on it became null and void.

Respondent

Respondent further explained that the mortgage to Juvereedas was paid off by the original mortgager, to whom that person passed a release, under the plea that he had lost the original Deeds and could not restore them. The three Grandsons then mortgaged the house to Mt. Roopa, who held it for about five years, when the Wall fell down, and the Owners were going to repair it, but Appellant interposed his claim, and the parties then went to Buroda, and agreed to a Punchayut, which was concluded by Appellant passing to the owners a Farighkhut attested by the members of the Punchayut. As soon as this dispute and the claims of Juvereedas were settled, Respondent completed his purchase of the house, receiving the Farighkhuts of Appellant and Juvereedas as his Title Deeds. Appellant molested him, and a Punchayut was held in the village of Oomreth, which decided that the Buroda award was final and could not be revised by them, and this opinion was affirmed by the Buroda Government, on complaint by Appellant.

The Court observed, that Respondent's title by purchase was certainly fair, if the house were free from incumbrances, but if not, they must be cleared off before the sale could be admitted, for as Appellant's right came from Juvereedas, if that person's mortgage were cleared off without reference to Appellant, what would become of Appellant? and it would depend upon the Law to decide to whom he must look for recovery.

The Deed of Sale was dated 2d Margsur Vud St. 1866, and after reciting all the authorities of the country from the Great Moghul down to the Village Patel, laid down the boundaries of the house, and declared it sold to Respondent for Rupees 501. The Sellers were Nurbheram Mooleshwur, and Brother; Huree Bhaee Vireshwur; and Purbharam Bhoola, their Uncle, and there were 34 witnesses to the Deed.

One of the Farighkhuts was passed by Juvereedas and his two Sons to the Owners of the house under the 13th Chytur Vud St. 1849, or A. D. 1803, declaring that they passed this release

to

to make up for non-restoration by them, on redemption of the mortgage, of the Bonds under which they had held it, and which had been lost by them, but the amount fully repaid, and they had no further claim on him.

The other was dated Monday 9th Vyshak Vud St. 1865, or 8th May 1809, passed to Bhoola Umurjee, and his son Prubhakur by Gungaram Asaram, and Appellant. After an account of the redemption of the property from Juvereedas, with the dispute caused by Appellant still detaining it from them under his mortgage through Juvereedas, it further stated that they had mutually agreed on a Punchayut, and as it had decided that no claim lay against them, or their house, but upon Juvereedas, Appellant and Gungaram passed this acquittance in acknowledgment of the Justice of the award, and in resignation of all claim upon the house, which they had restored accordingly.

Appellant on his part gave in the Punchayut nama, dated 2d Kartik Vud A. S. 1866 or 24th November 1809 passed by Prubhakur Bhoola, Nurbheram Mooleshwur, and Huree Bhaee Vireshwur, to Appellant, declaring that they were willing to abide by the decision of the Punchayut, even by payment of money if so decreed, and in case they should fail, Respondent became thereby bound to pay the amount, or to quit the house. If the Punchayut decreed nothing, then this writing was to be void, and Appellant was to sign the Deed of Sale executed to Respondent by them. This Paper was signed by Respondent as one of the parties to it. One of the witnesses to the release passed by Juvereedas, deposed to the execution of it by Juvereedas against his Will, under the influence of violence, which the witness described by saying that Munch,haram's Niece had married Ich,haram, who was then Moamlutdar, and kept Peons over him for one month until he gave it.

The Court then asked the Shastrees whether when the owners of a House, after redeeming it from the mortgagee (who had

resigned

resigned it thereupon and had passed them a release, but had previously remortgaged it to another person,) sold it to a third, the sale would be void until satisfaction of the claim of the second (or under) mortgagee, or not? and upon whom his claim for recovery would lie.

The Shastree answered, that according to the Mitakshura on the subject of mortgage, and in a case like the present, the owner would, on the passing of the Farighkhut, recover all his rights and thereby become at liberty to Sell the house to another person, whilst the under mortgagee must look to the mortgagee, from whom he derived his Title, for repayment of his advance.

The Court held, that Deed of release was good, and as Juvereedas had therefore no claim on the property, Appellant, according to the Shastr, had no such right remaining against, or in, the property, as to affect the owner's power to make a sale of it. The sale made to Respondent must therefore be supported and held good, Appellant being left to his remedy against the Heirs of Juvereedas; Judgment was accordingly given against him with Costs.

Decree 26th June 1829.

The Court considering the evidence defective on many points which would be strong in Appellant's favor, resolved to give him an opportunity of remedying the defect of proof, before coming to a determination, and he was therefore allowed to submit a list of witnesses for the purpose of shewing, first, the exact nature of the remortgage to him, whether the owners of the property sanctioned the transfer, and thereby rendered the premises responsible; second, the nature of the compulsion used when Juvereechund passed the release; third, who occupied or received the rent of the house from the time of the release, until St. 1865; and fourth, the nature of the bond taken from Appellant in that year, and other matters connected with the Punchayut, and of the last agreement to submit the matter in dispute to arbitration. For the purpose of obtaining this evidence a precept was issued to the Zilla Judge. The Court observed

Sudur Udalut. *Sitting Judge*, J. Sutherland, *3d Judge*.

upon

upon the fresh evidence handed up in the return, that Appellant had failed entirely by it to throw light on the first, and fundamental, point on which proof was desired, viz. that the owner of the premises sanctioned the Remortgage to him. As this had not been done, it was to be concluded that no such sanction had ever been given. When therefore the owner came to an adjustment with the original mortgagee, whatever incumbrances the latter might personally have laid on the premises, could not remain to the Owner's prejudice after the release, unless the owner became a party thereto by guaranteeing the Remortgage. The Court did not in consequence consider it necessary to proceed further, and therefore affirmed the decision of the Zillah Judge against Appellant with Costs.

Decree 12th June 1821.

N°. 18.

KUHANDAS SOORCHUND; KHEMA MANSINGH; BHUGWAN WALJEE; GOVIND BEHCHUR; and MOOLJEE KOONWURJEE,..... } *APPELLANTS,*

VERSUS

HEMCHUND HURUKCHUND.....RESPONDENT.

Kaira Udalut G. W. Anderson, *Judge*

ON the 24th November 1819, Respondent filed a suit for Rupees 799, as damages from Appellants for having in the month of Asvin St. 1875, or September 1819, spread a false accusation of his having had connexion with a Dheree, which being publicly talked of, and thus coming to the ears of the Cast (Bunyuns) they expelled him. He asked the Heads of it their reasons for so doing, and was told of this crime charged against him, but that they would readmit him if it were not proved. When he demanded a trial, they recommended that he should through the Udalut call on his accusers to prove their charge, and on their failing, his advisers promised to receive

Suit for damages for loss of Cast caused by a Slanderous and false report spread by Appellants that Respondent had held criminal intercourse with a low cast woman.

Slander denied by all the Appellantsbut one, who jus-

ceive him again among them. He said his children would have no protectors, and he could not live in such a state of exclusion, which extended both to bed and board, for his wife refused to have connexion with him as a polluted wretch.

tified it as founded on fact.

Decree in Respondent's favor on proof of the Report having been spread by Appellants, and none being produced in defence of its being true.

Appellants totally denied having spread Reports of the commission by Respondent of such an act, of which they declared their total ignorance. Respondent they warned the Court was a litigious character.

Respondent said his proof would lie on the following facts: First, that Kuhandas Soorchund promised a man Rupees 25 to spread such a Report; second, That Khema Mansingh, sitting by, added "it is money easily earned, so do not object." Third, Bhugwan Waljee actually uttered such a Report and promised a person Rupees 10, if he would stand as the authority with those whom he should send to him. Fourth, That Govind Behchur likewise uttered this Report. Fifth, That Mooljee Koonwurjee did the same, and had confessed in the Udalut that they were in all twelve, asking why Respondent had only sued five of them.

Each of the Appellants rejoined separately, the three first still denying their participation in the scandal, as did Mooljee at first, but afterwards asserted that he saw the Respondent, in ipso facto, with the Dheree, and told it to the fifth, Govind his Brother-in-law, who desired him in anger not to utter such things, which made him silent thereafter upon the subject. His story was, that he saw the Respondent one day, as he himself was returning home, go with the Dheree into the Surkar Grounds, and he saw them with his own Eyes in the act, when the son of a Tooree (the Priest of the Dhers,) came up, the Dheree called out, and Respondent concealed himself. The Tooree's Son immediately told all the story to those he met, and Respondent then came to Appellant's house and begged him to say nothing about it, and if the Muhajun (Head of the Cast,) asked him, he was to deny it and Respondent undertook to pay any sum they might fine him. The Court observed that the question

now

now at issue did not seem to be whether Respondent was to be restored to his Cast, but whether Appellants had really set about these Reports; if so, whether they were false, and whether in consequence of them Respondent had been excluded from Cast. It would remain with Respondent then to sue in a separate action, against the whole Cast, for restoration to it, if still refused. For in this case, it not being against the whole Cast, no order for readmission could form part of the Decree.

The Tooreea's Son deposed to Mooljee and the others having attempted to teach him the story which Mooljee himself had told in his rejoinder, but he declared such was totally false. The Respondent proved his case by sixteen other witnesses against the four first Appellants, among whom Kuhandas and Bhugwan stood the most active.

Five witnesses were called by Appellants; One said only that Mooljee told him the story. The next, that the Tooreea's son came to his shop, and told what he had seen. Two others, that Respondent's brother in their presence promised Mooljee to pay any fine, even up to Rupess 200 if he would deny what he had seen. The fifth said Respondent himself promised Mooljee the same at his Shop.

Appellants then pleaded that Respondent had given a writing in acknowledgment of the Crime to the Seth. It proved to be nothing more than a List of names of the persons who were to decide the dispute, with a remark in Respondent's hand, addressed to Govindjee and Mooljee as his accusers, that he would pay any fine the Punchayut might impose.

The Court had no doubt but the accusations and reports were set about by Appellants, whilst it was impossible to say whether they were founded in truth or falsehood, but Appellants had failed to prove them true. No set of persons could be allowed in this manner to put up accusations which tended to affect a man's character to such an extent, and to bring upon him consequences so terrible. Expulsion from Cast was the severest of punishments,

punishments, sending a man wandering from his home with a species of curse upon his head; his comfort utterly destroyed, his family and his Children dishonored, and himself become in the very sense of the word, a wretched Outcast.

In consideration of the part taken by Kulhandas and Bhugwan, aggravated by a degree of malignity not often to be met with, the Court decreed that each should pay Rupees 200 of the damages sued for, Khema Rupees 100, and Mooljee the same, with Costs respectively. The question of Cast not being before the Court, Respondent was left to the remedy of a fresh Action against them, if they still refused to admit him.

Decree 11th Aug. 1820.

Sirdar Udalut, *Sitting Judge.* J. Romer, *Second Judge.*

The Court conceived the evidence taken in the Zilla Court conclusive to the point at issue, whether Appellants, by their acts, did not set on foot a slander and false accusation against Respondent, under which his Cast had thought fit to expel him until he had cleared his character. And it further appeared that after passing of the Decree in the Zilla Court in Respondent's favor, a partial intercourse with his Cast was permitted, but again suspended on the cause being Appealed. Wherefore the Zilla Court's Decree in favor of Respondent was affirmed with Costs.

Decree 15th May 1821.

N°. 19.

COTTUMRAM and HIMMUTRAM, Sons of WUJEHRAM DESSAEE..... APPELLANTS,

VERSUS

HURGOVINDAS HURJEEVUNDAS..... RESPONDENT.

ON the 28th August 1820, Respondent sued Appellants to oblige them to remove an attachment from a house mortgaged to him by Gokool Lukmeedas Telee. He stated in his Petition that Gokool Lukmeedas owed him certain sums of money, and falling

Broach Udalut, No. 6503 '820. T. Barnard, *Judge.*

Mortgage by a Widow, of her late husband's house

to one of his Creditors, held good in the Zilla Court and Sudur Udalut against the attachment of another Creditor of the husband holding a Judgement against the widow of a date subsequent to the mortgage.

Vide Report No. 30.

falling sick in 1872, or A. D. 1816, Respondent got alarmed for his money, and dunned him for it. Gokool desired his wife Bhanee either to pay it, or mortgage his house to Respondent. After Gokool's death the wife neglected payment, and Respondent by dunning prevailed upon her, in Margsur of the present year, to mortgage the house to him, in her own and her son Pitambur's name, for Rupees 999, and the Bond was duly registered. Appellants had lately sued Bhanee and her son for a debt of Rupees 566-1-0 and getting a Decree in their favor in execution of it had caused the attachment of the house mortgaged to him. Respondent therefore sued to have attachment removed, as improperly laid upon a house previously made over to him, and no longer belonging to the mortgager. Appellants, answered that the claim of Respondent was fictitious, for if a just one it would have been settled by Gokool himself during his life time, whilst he was about it, and the pretended mortgage of the House for the debt was a fraudulent act, done for the purpose of cheating them. They urged further, that Respondent's claim under the mortgage could not possibly stand against their Decree, given against Bhanee as lawful Heiress of the property of her husband.

Respondent replied that Bhanee, as Heiress to her Husband, had likewise made over this house to him in payment of her husband's debt, at his command delivered to her on his death bed.

The mortgage Bond, which he exhibited, was dated Saturday 2d Margsur Sood 1874 or 19th November 1819 for Rupees 999 "Cash received," and was registered on the 20th December following. Respondent likewise by desire of the Court produced his Books, in which was found debited to Gokool in 1872; Rupees 455 and in another Book, Nundlal Suntook was debited with a payment of Rupees 341, on account of Bhanee, Widow of Gokool. This was verified by Nundlal, who produced his Book, in which Bhanee was credited in that amount "received from Respondent in liquidation of a debt due to Witness

"by

"by Gokool" on the 2d Margsur Sood, the date of the mortgage. The Court found that these sums, with the interest due on the first, would make up the amount of the mortgage.

Appellants on their part handed up the Decree of the Judge's Court, in their favor on a claim filed by them as No. 4872 against Bhanee, Widow of Gokool, for Rupees 655-1-00 due on a Sameedustkhut of the year 1872 and on which claim decision was given on the 1st June 1820.

The Court held that value had been duly paid by Respondent for the mortgage which he held of Bhanee's house, and the mortgage being declared valid, the attachment laid on the house by Appellants was directed to be removed, they paying Costs of Suit.

Decree 10th Jan. 1821.

The Court observed, that it was admitted by Appellants that they kept an open account with Bhanee in continuation of the dealings they had with her husband, and at various times sums were paid them on account of the debt due by the family, whereby they fully acknowledged the Widow and her Son competent to the performance of any act in respect to the management of the property of her deceased husband, and their objection now to the alienation made under the mortgage was not sustainable. Collusion on the part of Respondent with Bhanee had not been proved, neither was there any thing to indicate an inclination to keep them out of their rights. They should have guarded against such an occurrence by coming forward at an earlier period, seeing that about five years had elapsed since Gokool's death. The Court fully concurred in, and affirmed, the decision of the Zilla Judge which directed the removal of the attachment; Appellants were also ordered to bear Costs.

Sudur Udalut, *Sitting Judge.* J. Sutherland *Third Judge.*

Decree 24th July 1821.

As the Decree of the Zilla Court in No. 4872, in favor of Appellants, and on which this attachment was had, was not exigible, being against the property of the deceased Gokool only, of which none was forthcoming (having been placed beyond the reach of Appellants by the act of the Widow in this mortgage)

gage) there was a manifest contradiction between it, and the principle of the present decision.

The Widow having taken upon herself her husband's concerns and been acknowledged in possession, she must be personally responsible, but as there was no way of rectifying the former Decree of the Zilla Court, save in Appeal, for which the time had expired, Appellants were recommended to state the circumstances to a competent Court, and apply for permission to appeal.

N°. 20.

LUKMEEDAS VEREEDAS.....Appellant,

VERSUS

Mt. MANKOONWUR, Widow of PRUBHOODAS..... } *Respondent.*

Kaira Udalut, G. W. Anderson, *Judge.*

Sale of a house by an aged, infirm & foolish man, set aside at the suit of his wife, upon a Vyuvustha of the Hindoo Law officers, and evidence of the cast, with proof of the sale being at a base price and effected without knowledge and consent of relations.

RESPONDENT laid her Suit originally in the name of her husband, (who was then alive, but died four or five days after the filing of the Suit) on the 30th November 1819, to get annulled the sale of a house by him to Appellant, on the plea of his being of unsound mind, and legally incapable of effecting a Sale. The parties resided at Oomruth, and Respondent said Appellant had taken advantage of her husband's weakness of intellect and advanced age, he being 75 years old, to carry him, during Respondent's absence at the Fair of Gokool Muthoora in St. 1869, or A. D. 1813, to his own house, and there prevailed upon him to sell him his house. Respondent when she learnt this, opposed it and got her friends to interpose, but could not obtain restitution. Her whole subsistence during life, and performance of her Husband's and her own funeral expenses, must be provided for out of the proceeds of this house, their only property, and it was moreover her inheritance by law, after her husband's

husband's death, and for all these reasons she prayed for reversal of the sale, ejectment of Appellant, and restoration of the house to her. It was worth Rupees 3,200, but had been sold for Rupees 1,600 only.

A motion by Respondent's husband to permit the Registry of the Deed of Sale, and another by Respondent to prevent it, were recorded.

Appellant said in his defence, that in 1870, or A. D. 1814, half the house was mortgaged to him for Rupees 715, and in 1874, he advanced a fresh sum of Rupees 501 upon a loan at interest, which thus amounted to Rupees 1,266, and Appellant represented to Prubhoodas, that the property would be eaten up with interest, and he had better make a sale of the House at once. It was effected, through the medium, and with the knowledge, of the friends of Prubhoodas for Rupees 1,801, Appellant paying up the balance, above the debt, in Cash.

Respondent denied the mortgage, and Loan, or existence of any debts and repeated her declaration, that Prubhoodas had been many years deranged and totally incapable of doing any act of the kind, and she observed that Registry of the Bond had been refused by the Registry Office. Appellant had kept her husband in his house even to the time of his death, and brought him in to get the Registry effected, and where then was the Cash which Appellant had given in completion of the sale.

The Deed of sale was dated Monday 7th Kartik Vud 1874 or 7th November 1819, making over the house with all its appurtenances for Rupees 1801, giving one Bapoojee Mungul as security for quiet enjoyment by Appellant, and in this quality he signed the Bond, which was attested by seventeen witnesses. No mention of the former mortgage or Loan was made therein.

The Court called on Respondent for proof of the dotage and loss of reason of Prubhoodas at the time of the sale, and on Appellant to prove the Deed.

Respondent

Respondent called five witnesses, who deposed that her husband's behavior when abroad was very foolish; that he carried on no business, but lived on his father's property; one of them said his Mother and Grandmother were both in the same state of mind, and all agreed in saying that he was a dying man when brought in for the Registry.

From this evidence the Court thought that the deceased Prubhoodas was certainly not in possession of common sense, but it could not be concluded that he was a downright Idiot. It must depend on the witnesses to the sale, to shew whether he was competent in the eye of the Law to act for *himself* in cases affecting his property.

All Appellant's witnesses, with the exception of one, distinctly deposed that they had neither heard nor seen any signs of unsoundness of mind in Prubhoodas, who they declared was possessed of his sound senses, particularly at the time of the sale.

Finding the evidence so completely at variance, and that one side must have spoken false, the Court resolved to put Questions to the Cast of the deceased, as the best means of settling the point, whether he was competent to the various acts of life? An Umeen was also deputed to value the property which would shew whether Appellant had taken any advantage of the deceased. If it appeared that he had, the inference was clear, even though no perfect opinion could ultimately be formed of the deceased's state, and it would become a question in Equity whether, under such circumstances, the Widow, Respondent, should not be relieved from the effect of an act done by her deceased husband, bearing on the face of it the appearance of his having been nefariously dealt with.

The Questions to the Cast, that of the Dusa Khundaita Bunyuns, were thus stated. Did Prubhoodas carry on business, and if so could he conduct it like other people?

Did he keep his Parent's Shradh (Days of mourning in Bhadrapud

Bhadrapud every year (and the Samulchuree or Sumvutsuree (the mourning on the Anniversary of their death) or not? Were the marriages of his Family conducted by him according to Rule? And would such marriage hold equally valid as others? Had he the power to sell of his own accord any part of his property?

The answer of the Cast, signed by the Patel and 126 of the Members, was as follows.

First, We never heard nor saw that Prubhoodas carried on any business. Second, He could not conduct business like other folks. Third, we never knew him perform the Shradh and Sumvutsuree, but the Gour knows best, and his neighbours may know, but we do not. Fourth, He never celebrated marriage in our Cast, as usual by affixing the Chandla mark on the forehead. (Fifth, not answered). Sixth, He had the power certainly to dispose of his property as he liked, if he had made his Relations privy to it, but he could not do it alone. Seven persons stated that Prubhoodas used in his youth to transact business, and to gamble as high as Rupees 200 at a sitting. The person deputed as an Umeen, declared the value of the materials of the House to be Rupees 2,728-1-0, and the full value of the House was therefore taken at Rupees 3,728-1-0 allowing Rupees 1,000 for the expense of building, and the house was sold to Appellant, at least the Deed of sale shewed the price to be, for Rupees 1,801.

The Shastree was then asked, whether in this case, of the sale of a valuable House at a very low price by a person said to be an Idiot, and without the presence and concurrence of his Wife in the sale, it would be valid or not?

The Shastree Answered, In the Duttaprudaniku *Prukurnu* or *Chapter* on Reversal of Gifts, of the Mitakshura, and on the subject of Infants and Idiots, (1) an Idiot (Moodhu) is explained to

(1) Book second, leaf 69th, page 2d, line 8th.

to be "'One who is ignorant both of worldly affairs and of holy "' Writ," (the Vedus and Shastr). "If such person dispose of" (Giving here meaning any thing given, whether with or without return) "any thing, either by sale or otherwise, such Gift is "null and void" (ungiven), "and the property must be taken back "again." For this reason, as it appears that the Giver in this instance was totally ignorant in the above sense, his act in selling the House is null and void; the Widow can recover possession of it. Again, it is evident from the Vyuvharu Muyookhu, that if a thing of great price has been sold at a low price, the purchaser must restore it to the seller. (2) The Court held, that Justice demanded that the Widow be relieved, and the sale set aside, since there was no doubt that Appellant took an unfair advantage of the deceased, as might almost be assumed from the value of the house being so far higher than the sum given for it. But the issue of the questions to the Cast left no doubt but that the deceased Prubhoodas was incompetent to any such transaction as that of making a sale of property, without the advice of those interested in his welfare. Under this view, the Court decreed that the sale was null, that the house should be put into possession of Respondent, the Widow, and that all Costs of suit should be paid by Appellant, he being at liberty to recover for any sums he might prove to have actually advanced to the deceased.

Decree 28th Sept. 1820.

Sudur Udalut, *Sitting Judge*, J. Sutherland, *Third Judge*.

Appellant, to induce the Court to set aside this decision, urged generally that Prubhoodas was of sound mind at the time of the sale, and therefore competent to make it, and that it was effected at a fair price, further pleading that there were instances of Prubhoodas having performed acts of the same nature a few years

(2) Yagnyuwulkyu, (quoted in the Vikriyasumprudanu Prukurnu, or Chapter on Rescission of Sale of the Muyookhu) "That which has been sold by a drunken, or by "an insane man, or for a base price; also that which has been sold by one not independent "and by an Idiot" (Moodhu) "must be given up and restored by the purchaser." The same verse is not found in the Mitakshura but there is a similar one assigned to Vrihusputi in Cole. Dig. Vol. 2d, page 328.

years before, without question, and praying to be allowed to prove them. Respondent acknowledged these transfers, but said there was this difference, that the former were made in an open manner by Prubhoodas with the knowledge and consent of herself and his relatives, whilst this was done clandestinely, without the knowledge of herself or of those in whom vested the right of preemption, nor was the Qazee called on to superintend the sale, according to the Custom of Oomruth.

The Court did not conceive it necessary, with such clear evidence before it from the Zilla Court, to go into proof of the nature of former transactions, and being of opinion that the infirmity of Prubhoodas was clearly established, and that it was taken advantage of by Appellant to inveigle him into a clandestine sale of his house at a base price, affirmed the Decree with Costs in favor of Respondent, holding her fully entitled to the relief sought for in the Zilla Court.

Decree 18th June 1821.

N°. 21.

DADA BHAEE SUHOORABJEE..... *APPELLANT,*

VERSUS

DHOOLUBH DEOCHUND; (Mooneem of the Firm of NURBHEERAM BHUWANEEDAS) GOVURDHUNDAS; and PRUMANUNDDAS, Heirs of NARAYUNDAS TOOLSEEDAS, and NURSIOONDAS BHUGWUNDAS, } *RESPONDENTS.*

THE Suit was filed by Respondents on the 26th March 1819, to oblige Appellant to fulfil a Security Bond he had executed to them. It appeared from the Plaint that Respondents filed a suit against Buhramjee Suhoorabjee, for Rupees 500, and obtained a Decree for that amount and Costs against him, on the 16th May 1809, a month's time being in the Decree allowed for payment. When pressed for execution, Buhramjee tendered as his Security

Surat Udalut, *J. Kentish, Acting Judge.*

In the case of a security Bond executed by Appellant to Respondents agreeing to pay within a month from its date the amount of a Decree then

already passed against their debtor, the Court of Appeal ruled, that Respondents must recover by action at law, because the term specified in the security Bond had long expired.

Respondents sued, proved the Bond, and got a Decree for principal and interest. Principal only allowed by the Sudur Udalut because Respondents' neglect had caused accumulation of the interest.

Security the present Appellant, who executed the Bond on the 9th June 1809, to them for the amount adjudged, agreeing to pay it for Buhramjee within the month. Buhramjee, the principal, tried the point over again in the Recorder's Court in Bombay, but lost his action. Appellant, when called on to liquidate his Bond in the mean time, said he should wait the result of the action in Bombay, and they had been prevailed on by him to put it off still longer. When Execution was since applied for through the Court, Appellant denied his having stood Security, which denial the Zilla Judge believed, and the Court of Appeal having advised Respondents to file a new Action on the Security bond against Appellant, in consequence of the great lapse of time, they now brought it.

Appellant answered, that the claim was totally false, as he never entered into any security for Buhramjee. He urged that the latter remained in Surat 4 years after passing of the Decree, and it was the part of Respondents to enforce execution from the debtor, and not to sue him after a lapse of ten years, under a Security of one month.

Respondents again urged, that the Bond under which they sued was an exhibit out of the Nazir's Duftur, and entitled to every Attention by the Court as part of its own Records, which must be taken to be authentic.

They exhibited "Copy of the Record of the investigation "held before Mr. Keate between the 21st January and 6th "March, 1819, upon Respondents' motion for execution against "Appellant as Malzamin security for Buhramjee. The Secu- "rity Bond was therein recorded, and purported to be executed "by Appellant, agreeing to stand security for Buhramjee, in "the amount of the decree against him, which Appellant pro- "mised to pay, fully and without fail, within the space of one "month from that date, being the 9th June 1809. The Bond "bore no signature of subscribing witnesses. In Order to prove "it, Respondents called upon Nurotumdas, a Mehta under

"the

" the Nazir (the Nazir of that period being dead) who de-
" posed that he had been in that Office and knew Appellant,
" whom he remembered executing the Bond in question. The
" Court observed upon a difference in the first and second lines
" of it, which the witness stated to arise from the use of two
" different pens. Jugjeevun, a Goomashta of Juggoo Wul-
" lubh, remembered Appellant executing the Bond in the Na-
" zir's Office. The Bond was written by the other witness Nu-
" rotumdas. Another Mehta of the Nazir proved that Appel-
" lant paid Rupees 2 as the Fee for Security, formerly paid
" before the use of stamped Paper. Mr. Keate, conceiving
" this evidence to be unsatisfactory, permitted Appellant to
" swear that he had not executed the Bond, and thereupon deci-
" ded that he did not execute it, more particularly since the
" signature in Goojurattee did not correspond with specimens
" written at the moment by Appellant." An Extract from the Proceedings of the Court of Appeal under date the 20th March 1819, declaring the opinion of the Court, " that the Security
" Bond was a valid document really executed in the Udalut
" of Surat by (Appellant) Dada Bhaee Suhoorabjee, but finding
" also that the time of its being exigible might not exceed one
" month from the day of its date, the Court forbore to enter on
" that point, considering it more proper to leave Respondents
" to their remedy by an Action against the Security which
" they were fully entitled to, if they deemed it expedient thus
" to proceed in the matter."

Extract from answers to certain interrogatories administered on Oath to Appellant at Surat by commission from the Recorder's Court, in the second Answer to which Appellant said " I was
" Security for the Plaintiff in the title of these Interrogatories
" named, in which Narran Tulseydas, Nurseydas Bhugwandas,
" or Bhowanydas Kessoordass were Plaintiffs, and the said
" Plaintiff in the Title of these Interrogatories named was de-
" fendant."

This

This Extract was certified by the Prothonotary.

Appellant endeavored to prove that Buhramjee was not in Surat when the Bond was executed for him. But the Court gave no credit to the evidence, since they could not speak with any certainty to the time when Buhramjee left Surat. The evidence respecting Appellant having paid the Fee on entering into security, was corroborated by an Extract from the Fee Book.

The Court remarked that the Chief objection taken by Mr. Keate to the Security Bond, was on account of dissimilarity of the signature when compared with the other specimens of Appellant's writing before the Court. Now similarity of hand writing was at all times a very vague kind of evidence, and was of itself in no case to be considered paramount to positive, direct and unimpeached testimony. In the present instance, Appellant's own signature must have been full in view at the time he was directed to afford the specimen of his hand writing, and the resemblance, or non resemblance, of which he was naturally aware was to decide at once the merits of the case at issue. Some slight variation in the letters might easily exist, but in point of fact the only distinguishable difference was caused by the words in the latter signature being written above the line instead of below it, as usual in Goojurattee writings, and though this might occur occasionally from the hurry of business, yet evident symptoms of premeditation and design existed in this case, for the same irregular practise was adhered to in the signatures to the Wukalutnama, answer and rejoinder, and in furtherance of the opinion that it had not arisen from habit, but design, the formation of the letters would not be found to vary in any material degree from those of the signature affixed to the Bond. The terms of the security Bond were that the amount should be paid and discharged in the course of a month; but this circumstance could in no way destroy the right of Respondents to recover, for in every case where a Debt is promised to be liquidated in a certain period, and the Debtor fails to make good his promise, it would be contrary both to Equity and good conscience to allow

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an individual thus situated to profit by a breach of faith. The terms of the agreement were, not "that the Appellant would "remain security for Buhramjee Sohoorabjee for the space of a "month and no longer," but "that he would in the course of that "period pay the amount in full," and here having failed to abide by his contract, the Court was bound to award damages in the amount covenanted to be paid. Whereupon it was held and adjudged, that the Malzamin security on which the present action was brought, was duly and bona fide executed by Appellant, Dada Bhaee Sohoorabjee, and that the Respondents, under the terms of the security Bond, had made good their right to recover Rupees 500, Principal of the Bond, with Rupees 438-1-50 Interest, making a total of Rupess 938-1-50, which, with Costs in that proportion, was decreed to Respondents from Appellant.

Decree 14th Feb. 1821.

Nothing new was advanced on either side in their pleadings, except by Appellant asserting that Nurrotumdas had only been four years in the service of the Udalut. Under the circumstances of the case, the Court thought it peculiarly incumbent on Respondents to prove the document on which they sued, in the clearest and most satisfactory manner. Considering the inconclusive and unsatisfactory nature of the evidence, with the suspicion attaching to the Bond, and also Appellant's averment, which was not contradicted by Respondents, that Buhramjee remained four years in Surat after passing of the Decree against him, without any legal steps having been taken by Respondents during that period, either to enforce execution of the decree against Buhramjee, or of the Malzamin Bond against Appellant, his alleged surety, the Court held it unsafe on such insufficient proof to give Judgment at this distance of time, in favor of Respondents, and being thus of opinion that the Zilla Judge's Decree in their favor should be reversed, referred the case to a competent Court for that purpose.

Sudur Udalut.
Sitting Judge.
J. Elphinston,
Chief Judge.

The Judges could not concur in the view of the case recorded by the Chief Judge, and being of opinion that the Malzamin Bond

Competent Court,
J. Sutherland,
3d Judge.
E. Ironside,
4th Judge.

Bond was good, and should be supported, determined to sustain the acting Judge's decision, but as the Decree itself would not have been executed with interest, there was no reason why any sum on this account should be awarded. If Respondents incurred any loss by this, it was their own fault, for the intervening period during which they had been kept out of the property had elapsed from their own negligence in not suing either the Principal or his Security. The Decree of the Zilla Court was therefore amended by adjudging the Principal Amount of the Malzamin Bond only, Rupees 500-0-0, with Costs in proportion in both Courts.

Decree 30th August 1821.

N°. 22.

MAN BAEE, Widow of NUROTUM KASEERAM, ... } *APPELLANT,*

VERSUS

KRISHNEE BAEE, Widow of KASEERAM. ..... } *RESPONDENT.*

Kaira Udalut, G. W. Anderson, *Judge.*

RESPONDENT was Plaintiff in the original action filed in the Zilla Court on the 14th September 1819, claiming Rupees 700 the property of her late son Nurotum, from his Widow, Appellant her daughter-in-law, as left to Respondent in his Will to the exclusion of Appellant.

Kherawal Brahmun Cast.

Case of Inheritance. Respondent sued Appellant her daughter-in-law to recover part of the Estate of Appellant's deceased husband acquired by himself and devised to Respondent his Mother by will, and belonging to her likewise by

It was stated in the Plaint, that Nurotum acquired his property at Hydurabad, where he resided, and that he deposited his gains, to the amount of Rupees 1500, with a Merchant there and came to Oomruth, the residence of his family, and there died, and Respondent herself performed his funeral ceremonies. Appellant got the Foujdar of Oomruth to take Security from Respondent's youngest son, Koosuljee, in the Amount of Rupees 3,000 that he should not go to Hydurabad, pretending she had filed a Suit against

against him in that Amount. She herself then proceeded to Hydurabad, but without filing her Suit, on which the Collector ordered the Bond to be cancelled, and Koosuljee left at liberty to go where he pleased. He went to Hydurabad, but Appellant had in the mean time got hold of Rupees 950, out of the amount from the Merchant with whom it was deposited. In filing therefore for Rupees 700 only, Respondent allowed Appellant a deduction for the balance, as her "Matha Oolva" or "maintenance" to which she was entitled, founding her own claim to the rest, on her being Heiress to her Son by the Rules of Cast.

the Rules of Cast.

Disputed on plea of separation by the deceased and right of his Widow in such case to succeed and will denied.

Decree in favor of Respondent on the evidence of the Cast, and proof of the will.

Sudur Udalut held separation not to have taken place, but found that Respondent's other Son was named coheir in the Will, and dismissed Respondent's claim, as contrary to the Shastr, which declared that other Son, the Brother of the deceased, to be his legal Heir.

Appellant, in answer, admitted that Respondent did perform her husband's funeral ceremonies, but defrayed the expense out of his property. With respect to the Respondent's claim generally, she said that as her Father-in-law had no share in making this property, the right to a maintenance only could not be objected to her, since she had on that account a clear right to the whole Estate left by her husband, as his Heiress, for it was 15 years since he separated from his Family and went abroad, and she had in reality a just claim on Respondent for Rupees 3000.

Respondent replied that Appellant's rights, such as they were, had been more than provided for in the Will executed by her husband, and no real objection existed therefore to a Decree in Respondent's favor under it.

Appellant again said Respondent's son had possessed himself of Rupees 700, belonging to her late husband, from the Merchant, and this formed part of her counter claim against Respondent. The Court called for the Will, which bore date 2d Jesht Sood 1873 or 1st June 1817, and proved to be in form of a "memorandum by Nurotum Kaseeram, lately returned from "Cheenaputtun, in full possession of his senses, for the disposal "of his Cash, Estate, and effects, between his own Brother "Koosuljee, and Mother Krishnee Baee, and his wife, as fixed "by the members of Cast then present; as follows.

"To

"To his wife.—A Room to live in.

Rupees 251 for her maintenance.

A Field of four Beeghas.

Fifteen seers weight of Copper and Brass Vessels.

"His Mother Respondent, and Brother Koosuljee, were to "inherit every thing else belonging to him, with the money "abroad. Koosuljee was to perform his funeral ceremonies for "a year, and a Feast to the Cast. It was signed by Govind-"ram for the Testator."

Appellant denied her husband ever executed such a Paper, and Respondent was called on for proof of its execution; and as the custom of the Cast on the point of inheritance at issue required to be ascertained, the Heads of the Cast were summoned. Appellant was at the same time desired to shew, as she said in Court, that she only realized Rupees 800 at Hydurabad, and of this had spent Rupees 100, as Exchange on the Bill by which she transferred it, Rupees 250 for her travelling expenses, and the rest since.

Seven persons, Heads of the Cast of Kherawal Brahmuns, deposed that, in a case like the present, if the Family were not separated, the Mother and Brother would succeed to the whole property, the wife being allowed out of it a maintenance of Rupees 100 for every Rupees 5000, besides the Jewels belonging to herself, and a room to live in, but this Maintenance was not often taken, and only in cases when the Widow did not choose to live with her Mother-in-law. In case of there being no Brother, the Mother and Widow would share the Estate equally. When there was a Brother, and the family was united, and if the deceased had himself amassed the property, the above Rule for maintenance would have effect, but if the deceased had divided with his Mother and Brother the Estate of their Father, and separated, passing Deeds of separation, and had after such separation amassed his fortune, the Widow would inherit it to the exclusion of the Mother and Brother. In the

event

event of his having amassed it by his own exertions, and without any assistance from his Father's Estate, but not having separated formally, the Widow would then become entitled to Rupees 300 out of an Estate worth Rupees 5000; as maintenance, the Mother and Brother succeeding to the rest even if actually in possession of the Widow.

In proof of the Will, the Writer, and one of the witnesses were called, and deposed to its due execution, but the Court was not satisfied, because their evidence was at variance respecting the signature of the deceased, who, the writer said, was unable to rise from his bed, and got the Will signed by Govindram his Cousin; the other, that he signed it with his own hand, which trembled a little.

The remaining witnesses therefore were called. Govindram, whose name was one of those on the Will, verified his signature to the Will on the part of the Testator, but denied that, inserted first among the witnesses as his signature, to have been written by him, and said he did not cause any one to write it for him. He then recollected, and acknowledged the signature to be his and said Appellant was present. The remaining witness coroborated his account of the execution of the Will.

The Court found the Will proved, and that the Custom of the Cast allowed the Mother of the deceased to inherit, under certain conditions, the property of her son, to the exclusion of his Widow. The decision of the Court must be in support of the disposition of the property under the Will, as being confirmed by the Cast. It remained to be seen what was the Amount of the property brought by Appellant from Hydurabad. This Respondent agreed to take, according to Appellant's admission, at Rupees 800, and the Court conceived Appellant also entitled to a deduction for Rupees 103 the difference of Exchange. But she was held not entitled to deduction for any expenses, because she had no right to the property. Deducting, with the Exchange Rupees 250, fixed in the Will

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as her maintenance, the Balance, Rupees 447 was decreed to Respondent with Costs in proportion, she being liable to all Actions filed against her by her son, should he think fit to do it, as being included in the Will, and Appellant's right being also reserved, to sue for recovery of any demands she might have.

Decree 18th Sept. 1820.

Sudur Udalut, Pauper Appeal, *Sitting Judge.* J. Sutherland, *Third Judge.*

In Appeal it was pleaded that Respondent had no right to recover, because Appellant was legal Heiress to her Husband, and even if not, had expended the sum awarded against her, in payment of her husband's debts, and in travelling expenses, justly demandable out of the property recovered by the very journey on which they were incurred. The Court first took notice of Respondent's having sued under a Will in which she had only a particular interest, in which her son would have a joint interest, rendering it necessary to make him a party to it. Respondent pleaded that she acted for both, being empowered by her son on his part so to do.

The Sitting Judge held the objection to be fatal to Respondent's claim, because no mention was made of her son Koosuljee, whose interests under the Will, even if proved, might be sacrificed by any adjudication to one alone, and he had not shewn himself in any shape or stage of the proceedings. But the suspicious circumstances attending the Will, were of greater importance. Respondent's first mention of it was in her reply in the Zilla Court, and even then, no notice was taken of the right of her son. In conjunction with this, the contradictions of the witnesses to the Will carried conviction of its being a fabrication. Respondent's interest in establishing it was obvious, as without it Appellant became the Heir. Under these circumstances, the Suit was referred to a competent Court by the Third Judge, with his opinion that the Decree should be reversed in favor of Appellant.

Competent Court J. Elphinston, *Chief Judge.* E. Ironside, *Fourth Judge.*

The Court concurring in opinion with the third Judge, that it was impossible to consider it a valid and legal document, next proceeded to ascertain, whether Nurotum at his death, and for how

how long before, lived separate from his Mother. As the parties' Wukeels could not inform the Court on this point, fresh evidence was called for from the Zilla Court.

The Court was perfectly satisfied from the evidence of nine persons taken by the Zilla Judge, that no separation ever took place, Nurotum having always resided with his own family, both before his departure and after his return from Hydurabad.

The Court then asked the Shastrees to say, to whom in this case, and in what proportions, the inheritance would devolve, and they said, "that where a person, being united with his "family, should acquire wealth by his own exertions, whether "at home or abroad, and die without separating, then his Bro-"ther first inherits, next his Mother; and if neither of them "exist, his Widow succeeds. (1) The Widow is not Heiress "in this case, and the Mother and Brother must maintain her "as themselves. If her late husband had given her a separate "maintenance, the heirs must bear her reasonable expenses on "that account. Thus say Munoo, the Mitakshura, and other "Books." (2)

The Court held from this exposition, that the Brother, whose name had never appeared in any stage of the case as a party, was

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(1) Vide Case No. 10.

(2) Supposing the deceased to have received assistance originally from the joint stock. For if he had not, then his widow succeeds, under the law laid down in Bombay Cases No. 51 by the Zilla Shastrees. It may be said their Vyuvustha wants the confirmation of the Sudur Udalut Law Officers, and it will be worth enquiring "whether the act of a man, "unseparated, amassing wealth by his own exertions without assistance from the joint "stock, constitutes that wealth so entirely his own, that his Wife will become, on his dy-"ing without male issue, his Heiress as completely as if her husband had actually separated "from his brethren?" My Shastree (and I agree with him) thinks she would. The Sudur Udalut Vyuvustha in the present case seems either to deny this, or to assume that he received assistance from their joint Estate. Allowing the Sudur Udalut Shastrees to be correct, then the brothers succeed by the law laid down in Mit. Book second, leaf 55th, page 2d, line 10th. "Among brothers if any one die without issue, or enter a religious "order, let the rest of the brethren divide his wealth, except the wife's separate property. "Let them allow a maintenance to his women for life, provided these preserve unsullied "the bed of their lord." Colo. Mit. Ch. 2d, Section 1st, para. 7th.

was alone Heir to whatever property might have been left by the deceased Nurotum.

This being the case, and Respondent admtiting that her son Koosul was alive and of the age of 25 Years, the Court annulled the Judgment of the lower Court, ordering Respondent to bear all Costs.

Decree 31st October 1821.

N°. 23.

TOOLJARAM ATMARAM, ... *APPELLANT,*

VERSUS

MEEAN MOOHUMMUD, and UBDOOL MUZEED, Sons of MOOHUMMUD UKRUM BHAEE. ..... } *RESPONDENTS.*

Surat Udalut. J. Kentish, *Acting Judge.*

RESPONDENTS filed a Suit against Appellant on the 14th December to remove an attachment from, and to recover possession of, 25 Beeghas of Jiraut land situated in the Village of Buhestan, Purgunna Chowraisee, belonging to Wullubhram Kukkoo Mehta, by him mortgaged to Respondents under the name of Suyud Buhaood Deen, for Rupees 500 in 1232 Hijree, which land Respondents actually possessed under that mortgage Bond from that time until next year, when Wullubhram borrowed Rupees 125 more from Respondents themselves, and executed a new Bond for the whole Amount, Rupees 635, to them in their own name, and which was duly registered, as well as the first one; a condition was annexed to the last Bond, by which the Mortgager agreed to repay the money in five months, or to resign all claim to the land, as if actually sold to Respondents. They had retained possession under this Deed termed a "Bye Bat," receiving from the Ryuts and paying to Government, the amount of the Rent, and having in their

Where land was doubly mortgaged in the first instance to Appellant and again to Repondents under two Bonds, at different times the second with condition of sale after five months without redemption, and possession vesting in Respondents, it was held under the authority both of the Hindoo & Moohummedan Law, that a mortgage is completed by possession, & that a mortgage of later date support-

their hands both the Bonds, as well as other Title Deeds of the Land; but it was lately attached at the Suit of Appellant against Wullubhram, and Respondents came forward now to have the attachment removed.

ed by occupation annulled a prior one unaccompanied by possession.

Appellant answered by declaring that he himself held the land (which was Wuzeefa), for Rupees 500, under a mortgage Bond of 1232 Hijree authenticated by the Mooftee's Seal and registry at the Udalut. He likewise flatly denied possession by Respondents, since he himself held it and had a decree in his favor for the Rent against Wullubhram under a Lease authenticated by the Mooftee's Seal. Respondents asserted that Appellant himself was one of the witnesses to the second mortgage Bond in their favor, and that he actually attended the Registry of it, and then and there declared "that his claim on the land for "Rupees 500-0-0 had been fully liquidated by Wullubhram, and "that he, Appellant, had no further claim on it." The Decree Appellant alluded to was obtained by a trick arranged between the parties, in the Court of the Umeen, who was a Hindoo, and was naturally blind to the devices of his Brother Hindoos.

Respondents then exhibited,

The Bonds under which they claimed to recover. The first was dated 12th Zilkad 1232, or 24th September 1817, and registered 1st October following. The second dated 26th Zilhez 1238, or 27th October 1818 and registered on the 3d November. In the first, the term of four years was allowed before it became Bye Bat, or unredeemable. The Title Deeds were by it given up to Respondents. The second Bond purported to be an entirely new one without reference to the former, passed in Respondents' names for Rupees 625, in which sum Wullubhram mortgaged the land to them, declaring it to be unredeemable after the expiration of five months from date of this Bond. No interest was specified, but the mortgager declared himself bound to make good any loss by the seasons or the act of God, or the King, or the King's Enemies, (Incursions of the Grasseeas).

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The Title Deeds, including the former mortgage Bond, in the name of Suyud Buha ood Deen, were given over with a declaration that the mortgager would redeem them, together with the mortgage, within the time specified. The Title Deeds were, a Royal Firman from Ourung Zeb, granting 100 Beeghas of good Arable Land to the Mosque of Hajee Hafiz Moohummud Bukka, to keep it in repair. It was dated 25th Shaban in the 6th year of Jooloos, or of Aurung Zeb's reign.

A Deed of Sale, dated 1st Moohurrum 1230, or 14th December 1814, from Hidayut, alias Cheebun, Widow of Moohummud Fazil, of 25 Beeghas of land in Buhestan for Rupees 401 to Wullubhram Kukkoo Mehta.

A Sunnud, corresponding with the above Firman, and an order issued by the subordinate Authorities on receipt of the Sunnud. Respondents then handed up the counterpart Leases, or Gunot namus, one of St. 1873, A. D. 1816 | 17, the others of 1875. The first was given by Dessaee Ram Bhaee Ukkoo Bhaee, agreeing to hold these 25 Beeghas of land for 1874 and 1875, on a progressive Rent of Rupees 75 for the first, and Rupees 100 for the second year.

The others were by two different persons, who divided the land between them for one year. Each of these Tenants proved his own occupation of the land in dispute under the Respondents, and none of them had held under Appellant nor paid him Rent. The second mortgage Bond having been shewn to the Appellant, he positively declared that the name, signed on it as his, was not written by him. The Court referring to the Deed Registry Book found that Appellant's name was not therein recorded as a witness. Respondents then called two persons who as positively swore that Appellant did attest the original Bond.

The Court remarked that this evidence was supported by the Title Deeds being in the hands of Respondents, and not of Appellant. Appellant then exhibited, his own mortgage Bond,

dated

dated 10th Jumadee ool Uvvul 1232 or 17th March 1817, and registered on the 9th April. It was stated in the Deed, that Appellant had enabled the mortgager, by an advance of Cash, to redeem this land, then mortgaged to Kaoosjee Peshtunjee for Rupees 301, for which that mortgager was pressing him hard, and the land was remortgaged for this advance. The Terms respecting Loss by seasons &c. were similar to those expressed in Respondent's Bonds, but there was no stipulation of Bye Bat.

And a Copy of the Decree obtained by him against Wullubhram Kukkoo Mehta " for Rupees 45 due on a Lease for 1232, or A. D. 1817."

The Court remarked on this last document, that even supposing no collusion to have taken place between the parties, it did not satisfactorily prove that the Appellant ever actually and bonâ fide had, or held, possession of the land, whilst Respondents had clearly proved their possession both by documentary and oral evidence. From an inspection of the mortgage Bonds, it was clear that the land had been mortgaged to both parties, and that the priority of the Deed was in favor of Appellant, whilst possession, with its exclusive rights and privileges, solely vested in Respondents. It became necessary therefore to consult the Hindoo and Moohummudan Law Officers.

They were desired to state, which of the parties in this Suit had a preferable Title to the Wuzeefa land in question, seeing that the claim of one was founded on Priority of mortgage, of the other upon possession.

The Shastrees gave answer as follows.

The title of the Appellant, though prior in date, is less strong than that of Respondents from want of possession on his part. Respondent's claim under possession is paramount. The Appellant's claim does not hold, in the face of Respondents' possession, as a mortgage by the mere execution of a Deed without actual entry, and Entry had given full force and completion

completion to that of Respondents (1) This opinion is given according to the Mitakshura. The Moohummudan Law Officers said, Appellant's claim under a Mortgage, without possession, is altogether incomplete and void. The Mortgage to Respondents is complete and valid by reason of possession. For a thing mortgaged must be taken in actual possession, to render the mortgage binding; and this mortgage to Respondents, being accompanied by possession, is valid. This opinion is given from the Book on mortgage in the Hidayu. This opinion was signed by the Mooftees, a Qazee and a Mouluvee.

The Court from these answers found, that both by the Hindoo and Moohummudan codes, the right, claimed in virtue of joint possession and mortgage, was of greater validity and effect than the mere circumstance of priority of mortgage without occupation. And further the Court conceived, that even excluding the proof brought forward by Respondents in support of Appellants having actually signed the Bond, it could not for an instant be admitted that the latter could possibly remain ignorant of the occupation and possession of the land. It was held therefore that Appellant, by non-interference, gave a tacit acquiescence and permission in favor of Respondents possessing themselves of the property, and thereupon it was adjudged, in conformity to the Hindoo and Moohummudan Law, that right of possession supersedes the priority of mortgage, and that Appellant, by his non-interference and silence had confirmed, by tacit acquiescence, the right of Respondents to possess the property in dispute, and the attachment, which Appellant had caused to be placed on the land, was ordered to be removed, as sued for, Appellant paying all Costs.

Decree 10th March 1821.

Sudur Udalut, *Sitting Judge*, J. Elphinston, *Chief Judge*.

The Pleadings were much the same as those held in the Zilla Court,

(1) Mit. Book second, leaf 24th, page 2nd, line 15th, Narudu, "Pledges then are said to be of two kinds, moveable, and immoveable. Both are valid when there is actual enjoyment, but not otherwise." In Cole. Dig. 1st, 205, this verse is attributed to Vyasu. Refer also to the saying of the Smriti and Bruhusputi, in the 24th page of the same volume, being more to the point than the above quotation by my Pundit.

Court, Appellant adding that he had redeemed the land from a former mortgagee, Kaoosjee Peshtunjee, and requesting that the Leases exhibited by Respondents might be handed up to the Law officers. The Court put the same question to them as had been propounded in the Zilla Court, handing up the Leases, as desired by Appellant. The Shastrees thus stated the Hindoo Law on the subject. Supposing the Deeds both proved, the one first executed is the one to be confirmed and valid. But if possession have passed to another mortgagee, together with the Lease of the Land (Prithvee), and if the Title Deeds be also in this second mortgagee's hands, then if the first mortgage be not proved, (by such acts of possession and enjoyment (2)) in this case, occupancy, coupled with the Title Deeds, renders the second mortgage the only valid one.

The Moohummudan Law officers stated their Law to hold, that "Possession of a Pledge in mortgage, by the mortgagee, completes the mortgage," wherefore they said Respondent's right was decidedly the best to the land in dispute between them and Appellant.

The Court considered that if there were no collusion between Wullubhram and Appellant, the latter had at any rate shewn great negligence in not obtaining possession of the Title Deeds as first mortgagee, which would have prevented the mortgager from attempting to commit fraud by mortgaging the same property a second time. Appellant had himself alone to blame for the consequences of such neglect. Considering the circumstances of the case, the Court determined to affirm the Decree of the Zilla Court, with costs against Appellant.

Decree 31st July 1821.

No. 24.

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(2) This explanation was given to me by the Sudur Udalut Shastree, Shumbhooram, in person; without it the Vyuvustha went to shew, that a second mortgage, fortified by possession, was not valid before a prior mortgage "*if* the first mortgage *be duly proved*," such "proof" being of course open to any interpretation.

No. 24.

MIHIRWANJEE and DADA BHAEE Sons of KHOORSHEDJEE.... ..... } *APPELLANTS,*

VERSUS

LUKMEERAM GOCLABRAEE.. .....RESPONDENT.

Broach Udalut, T. Barnard, *Judge.*

APPELLANTS sued Respondent, in a Suit filed in the Broach Zilla Court on the 30th June 1820, to recover from him Rupees 619 1 00 due on a note of hand. Respondent allowing judgment to go by default, Appellants were called on for proof of their claim, when they handed up a note of hand passed by him on Tuesday 2d Magh Sood 1805, or 17th January 1809, for Rupees 301, with interest at 12 per Cent per Annum. The Respondent's account, extracted from Appellants' Books by the Court, shewed Rupees 330-2-00 due on this Bond on the 1st Kartik Sood 1866, or new year's day, with a further accumulation of interest up to the 6th Vyshak Sood of Rupees 19-3-00 and Respondent was credited with a payment of Rupees 40 on the 11th Jesht Sood following, leaving a balance of Rupees 310-1-00 on the latter date. The Bond was fully and satisfactorily proved by the subscribing witnesses, and Appellants having made affidavit before the Acting Judge of Surat, under a commission transmitted to him by the Broach Court, of the truth of their account, in that they had received no more from Respondent in payment of his debt than that account set forth, the Court decreed to them the amount sued for, with Costs of Suit, " to be paid from such property of Respondent, as Appellants should point out."

Restriction in an exparte Decree confining execution to the property of the absent debtor, set aside by the Sudur Udalut, and the debtor made liable both in person and property for amount of the Zilla Decree and its costs with half those in the Sudur Udalut.

Decree 12th March 1821.

Sudur Udalut, *Sitting Judge.* J. Sutherland, *Third Judge*

Appellants brought their case before the Sudur Udalut with a view of getting that Rule in the Zilla Decree which limited execution of it to Respondent's property alone, extended and made general, so that Respondent's person might be attached,

as

as this was the only means they had of procuring execution. Respondent still allowed judgment to go by default.

The Sitting Judge being of opinion that the decision ought to have been general against Respondent, and that no cause appeared for warranting execution only against his property, referred the case to a Court of two or more Judges for so far amending the Zilla Court's Decree.

Competent Court, J. Elphinston, *Chief Judge.* E. Ironside, *Fourth Judge.*

The Court determined, in concurrence with the opinion of the Third Judge, to amend the Zilla Judge's Decree by making the Decree general against the Respondent, and it was thereupon adjudged, that should Respondent's property be insufficient to satisfy the Decree, the person of Respondent might also be taken in execution. Costs in the Sudur Udalut to be equally borne by the parties, whereby Respondent was to pay Rupees 32-1-90 to Appellants, in addition to the amount of the Zilla Decree.

Decree 6th Sept. 1821.

N°. 25.

MULIK RUTUN BHAEE, RUHEEM BHAEE; and INAUT BHAEE THOSUR BHAEE..... } *APPELLANTS,*

VERSUS

KESA BHAEE and BHEEM BHAEE, Heirs of MULIK GHUFFOOR; and JEEVUN BHAEE and KOOTUB BHAEE, Heirs of FUTTEH BHAEE. } *RESPONDENTS.*

Ahmudabad Udalut, Charles Norris, *Acting Judg*

THIS suit was filed by Respondents in the Ahmudabad Udalut to recover a share of grass lands in the village of Ranpoor. It was there referred by the parties to Arbitration, and the award being in favor of Respondents, the Zilla Judge confirmed it by a Decree, which was afterwards affirmed in Appeal by the Provincial Court on the 22d June 1820.

Decree 2d July 1819.

When

Sudur Udalut, *Sitting Judge*, E. Ironside, *Third Judge*.

When the cause, which was transferred from the old File, came on in the Sudur Udalut, and the Sitting Judge was about to hear the pleadings, Appellant tendered a Razeenama, in the body of which it was given as a reason, that their cause had been settled at Ranpoor, as a proof of which they handed up a letter, addressed to the Judge, announcing the same. The letter was refused under the Regulations; with respect to the Razeenama, the Court observed that it had no power to refuse it, Appellants being at any time at liberty to withdraw their suit. In filing it however, the Court ordered and decreed, that all the usual expenses incurred by Respondents since the filing of the Appeal in the Sudur Udalut, should be reimbursed to them by Appellants, who were to bear their own Costs also.

Razeenama tendered by an Appellant, held to entitle the Respondents to the whole of their costs in appeal, and to interest from date of the lower Court's Decree.

On the 15th Respondents petitioned for interest to be awarded, and a precept was accordingly issued to the Zilla Judge to levy it, at the usual rate, from the date of the Provincial Court's Decree to the 9th Instant, and pay its amount to Respondents.

Razeenama 5th March 1822.

Extract from the Minute Book Friday 9th Aug. 1822.
Present,
J. Romer, *Chief Judge*.
J. Sutherland, *Second Judge*.
E. Ironside, *Third Judge*.
T. Barnard, *Fourth Judge*.

Read and Recorded a petition from the above Appellants, by their Wukeel, praying the Court to issue an order to the Judge of Ahmudabad to stay execution of the above Decree until a final decision of their case by a Punchayut which had not yet been given, in consequence of the opposite party having never come to the Punchayut, though they had agreed to that mode of settlement. The Court informed them in answer, that it saw no alternative but for Appellants to revise their Appeal in the Sudur Udalut, for which permission was now given, if they thought fit so to do, as the Court could not interfere with the subject of the Punchayut to which Respondents objected. Appellants' Wukeel replied that he had no authority for agreeing to a revival.

It was accordingly ordered, that the Razeenama be considered final, and further, with reference to Respondents' former petition

petition for interest to be allowed, the usual interest was granted them, from the date of the decree of the late Court of Appeal or 22d June 1820, up to this date.

N°. 26.

MANKOONWUR, Widow, PHOOL, and BRIJKOONWUR } *Daughters, of Dhoollubh Veljee deceased* } *APPELLANTS,*

VERSUS

BHUGOO and DUYAL { *Heirs of Veljee Jogeedas,* } *RESPONDENTS.*

Broach Udalut, T. Barnard, *Judge*.

Claim by the Widow and daughters of a person deceased against his half brothers for his share of the family Estate, suing for a part only of his share. Respondents' right to share decreed by the Zilla Judge but thrown out on the grounds of non separation by the Court of Appeal whose Decree was affirmed by the Sudur Udalut.

ON the 5th April 1819, Appellants filed a claim in the Broach Court to recover from Respondents the sum of Rupees 4,192-3-00 amount property left by Dhoollubh Veljee. It appeared that Veljee Jogeedas, the common Ancestor, had Issue, Respondents by one Wife named Laroo, and by a former Wife, had Dhoollubh, who married Appellant Mankoonwur, and left by her two Daughters, the other Appellants.

These three women now sued for that part of the Estate left by Dhoollubh, being the share due to him of the Khandgee Khata, or Private account. Appellants admitted that the deceased lived and ate separate from Respondents, but had a claim against them on account the partnership, from St. 1864 or A. D. 1808, to St. 1871, or A. D. 1815, when Doollubh died. On this Account Rupees 3,230-3-00 were credited to him in the Books, which, with Interest at 6 per Cent per annum, Rupees 962-0-00 made Rupees 4,192-3-00, the amount sued for. Appellants declared their intention to sue at a future period for their general share in the Business of the Firm composed by Dhoollubh and Respondents his half Brothers.

Respondents answered, that the Firm, even in their Father's life,

life, went under the name of Dhoollubh Veljee the Eldest Son. It had continued so since, without any separation of family interests, though the meals were eaten separately by the women, because they could not agree; each brother had, as usual among Merchants, a separate Head in the Accounts for his expenses, and since Dhoollubh left no Son, Respondents in consequence of the family being joint, were his Heirs. Mankoonwur was only entitled to a maintenance, but they had a counter claim against her for making away with some of this joint property in Dhoollubh's hands, and which they had disliked to bring hitherto against a defenceless woman. They at the same time referred to their own Books for proof that Dhoollubh at any rate had no claim remaining against them for any balance. Appellants likewise referred to the Accounts, and said a separation of Goods took place even during Veljee's life time, when the name of the Father was struck out of the Firm, and that of Dhoollubh substituted."

The Court caused Extracts to be made from Respondents' Books, from which it appeared that Rupees 2,618-2-50, were due to Appellants; besides an Item of Rupees 272-2-00 paid through one Mooljee Vyas. In the same Books Dhoollubh was debited for different sums amounting to Rupees 4,047-2-62. Of these, Appellants admitted some, to the amount of Rupees 357-3-25, pleading that out of the Balance Rupees 3,244-2-37, was expended by the Mother and Brother of Respondent Bhugoo at a Yatra, and fraudulently debited to Dhoollubh; Rupees 307 was spent on a Deo on account of the Firm, and the remainder Rupees 48-1-00 on their account also.

Appellants exhibited an account current of St. 1870, shewing a Balance in Dhoollubh's favour of Rupees 2,703, and this was proved to be in the hand writing of Respondent Duyal by a witness Huree Bhaee Roopa, who also deposed to the hand writing of Dhoollubh in the Books of the Firm, a little subsequent to an entry of Rupees 3,083 against him.

Bhana

Bhana Nundlal was called on to explain a transaction of a Hoondee drawn on the Firm by Dhoollubh from Bhaonugur for Rupees 1125, which sum witness had received. He explained, on being shewn the account Books, that the Item of Rupees 3,088, against Dhoollubh was not regularly entered, but as if inserted afterwards to make up for an omission. The same was the case with the Item of Rupees 2,735, which, with Interest, composed the former Balance against Dhoollubh of Rupees 3,244-2-37 admitted to have been expended at the Jatra, to which Dhoollubh went with Duyal and Laroo, the Mother of Respondents.

Witnesses were called by Appellants to prove that these two persons kept their expenses separate on that occasion from Dhoollubh, and consequently that Dhoollubh could not be charged with the whole expenses. One Mooljee deposed to Dhoollubh having taken up at different times Rupees 2,310, from him, saying it was on account of the Jatra.

The Court compared the Books with those of other persons, and was satisfied that the entries pointed out by the witness Bhana, were of an irregular nature. The witnesses whom Respondents called to prove the Balance struck by Dhoollubh in St. 1870, of his account, appeared to the Court guilty of gross prevarication. Other Items were commented upon, but the Court observed, that Respondents' Books evinced the disputed Item entered against Dhoollubh to have been inserted in an unusual manner, whilst it was proved that Dhoollubh's expenses at the Jatra were distinct from those of Laroo and Duyal, wherefore it followed, that the sums debited to Dhoollubh must have been on account of the latter. The sum said by Appellants to have been paid through Mooljee Vyas, was not proved, whilst the sum of Rupees 397, was proved by witnesses to have been spent on account of Dhoollubh alone. The Court found Rupees 2618-2-50 only to be due to Appellants, to whom that sum was decreed with Interest and Costs on that sum.

Decree 17th Sept. 1819.

Respondents

Court of Appeal,
J. Elphinston, *Chief Judge.*
J. Romer *Second do.*
J. Sutherland, *Third ditto.*

Respondents made an Appeal against this decision on the grounds that although the Brothers ate and conducted their Household Affairs and expenses separately, yet they were an undivided Hindoo Family to all intents and purposes, and united in their business, and the decision in favor of Appellants was not according to Law.

Appellants defended it, still asserting that the separation of the Family took place long ago, and pleading the general merits of the case. The Court required fresh evidence from the Zilla Court upon the following points.

First, when and where the Firm of Dhoollubh Veljee was established. Second, who were the proprietors of it at its institution, subsequently, and what was the share of each. Third, In what year Veljee Jogeedas died, and whether his property, or any part of it, was divided among his heirs, after his death, or at what time. Fourth, whether the interests and concerns of the Firm of Dhoollubh Veljee had remained undivided, and if they still were so. Fifth, If undivided, who formerly, and who at present, were considered Proprietors of the Firm, and by whom its affairs were managed. Sixth, whether Dhoollubh Veljee had any separate property unconnected with the Firm. The Judge was desired to state his own opinion of the evidence which might be adduced upon these points, making his Return within 25 days after receipt of the precept.

The witnesses generally agreed that the House was in St. 1840, or 1841, (A. D. 1784 and 5,) established at Kusba Amod by Veljee Jogeedas, who was succeeded by Dhoollubh, and Respondent Bhugoo became head of the house on his death. An old Goomashta of the Firm, named Kupoorchund, said that in St. 1851-2, Veljee and Dhoollubh divided the property into two shares, of about Rupees 6,000 or 7,000 a piece. Veljee died in 1857, and no division took place after his death up to the present time. Dhoollubh had some separate transactions with Mooljee Vyas. The witness was Brother of Appellant

Mankoonwur

Mankoonwur and could not speak to the actual separation, at which he was not present, but heard of it from Dhoollubh. No papers were passed on the occasion. Family expenses for mourning and rejoicing were paid from the common stock. Dhoollubh carried on trade with Mooljee from his share of the profits of the Family Trade. No change in the internal management of the Firm took place after it took the name of Dhoollubh Veljee. The other witnesses spoke of a separation between Veljee and Dhoollubh, but could not define it from actual observation and knowledge, farther than that the parties lived apart, as admitted by Respondents. The evidence agreed with that given by Mankoonwur's Brother Kupoorchund respecting the house. Kishun Johura, a witness called by Respondents, whom the Zilla Judge considered the best informed of all the witnesses on the subject, corroborated Kupoorchund's account of the rise of the Firm, declaring that the Family had never separated their property; he could not speak to Dhoollubh's having carried on a separate Trade. Bhugoo now managed the Firm under its old name of Dhoollubh Veljee. The reason for changing it from that of Veljee, was that the latter got a Post under the Amod Raja, and left business.

The Zilla Judge observed in handing up this evidence that he saw no reason to suspect the veracity of the witnesses, but they did not appear intelligent.

The Provincial Court asked its Pundits, (after stating the case,) who was to be considered the Heir of Dhoollubh, seeing that though Head of the house, he only carried on the business left to him and his Brothers by their Father Veljee, and that neither the Father, nor his Sons after him, had divided the Family property.

They answered, By the custom of the country, the surviving Brothers of a person deceased, being of a Family whose Estate is undivided, are the proper Heirs of that Brother, and, as such, are bound to maintain the Widow and daughters of that deceased,

ceased Brother. This opinion is given with reference to his dying without male Issue, and is agreeable to the Mitakshura and all other Books.

The Court of Appeal decided, after this reference, that Respondents were legal Heirs to all property of which Dhoollubh Veljee died possessed, in consequence of no division of the Family Estate having ever been effected. The Zilla Decree was therefore reversed, and Appellants declared entitled to no part of the property save what might be awarded to them as maintenance under the Hindoo Law, and for which they might sue in the Zilla Court, if refused to them. Appellants were to bear Costs in both Courts.

Decree 29th August 1820.

Sudur Udalut, *Sitting Judge*, E. Ironside, *Third Judge*.

Appellants filed an Appeal in the Bombay Sudur Udalut which was transferred to the new Sudur Udalut File, and brought on for hearing on the 5th March 1822. The Court observed, that Appellants founded their Plea of an actual division, upon the fact of the families living separate. But such a Division as the Law required Appellants could not prove, when they had the opportunity afforded them by the Court of Appeal, which being satisfied that no division of property had been made had in conformity to the opinion of their Law Officers reversed the Zilla Decree, and the Sudur Udalut now resolved to affirm the Provincial Court's Decree by dismissing the Appeal with Costs.

Decree 5th March 1822.

No. 27.

LUKMEE, Widow, and RAM BAEE, Daughter, of { *Balmookoond Deochund....* } *APPELLANTS,*

VERSUS

UMURCHUND DEOCHUND,.....RESPONDENT.

Surat Udalut, J. Kentish, *Acting Judge*.

RESPONDENT was Plaintiff in the Zilla Court, filing a suit on the 9th August 1820 against Appellants, in which he thus

thus set forth his case. His Grandfather Premjee had a Son named Deochund, who left four Sons, Respondent Umurchund, with Manikchund, Dhurmchund, and Balmookoond. These four Brothers made a division of the Estate left by their Father, under Deeds duly executed, in St. 1870, or A. D. 1814. Dhurmchund and Manikchund died that same year, and their Estates were managed jointly by the two survivors. The property was placed in a room formerly occupied by Manikchund, under double Keys, one kept by each of the surviving brothers, until St. 1875 or A. D. 1819, when Balmookoond died, leaving Appellant, his fourth wife, with a daughter, the other Appellant, by a first, and a Son Bhugoo, by a third, wife. Respondent paid his Funeral Expenses, but allowed his Son Bhugoo to remain under the care of Appellant, his Sister, in consequence of his tender age. He had lately heard that the Estate of the deceased, as well as that left by the two other Brothers, was being made away with, and Respondent conceived himself bound, as lawful Guardian of Bhugoo under the Shastr, to come forward on the part of the child to look after his interests until he came of age. Respondent himself had a claim to share in the Estates left by Dhurmchund and Manikchund, but should defer that until the same period, since he had wherewithal to live, and only wanted to prevent the property from being squandered away in the mean time. He laid the amount of Suit at Rupees 3,000. and prayed the Court to take the Estate under its management, allowing him, Respondent, to exercise the right of Guardian to Bhugoo the minor.

Claim by a Hindoo against his brother's fourth Wife. and a daughter by his first, to prove his right to the guardianship of the minor son of his brother by a third wife, separation of the brothers being admitted in the outset.

The boy's stepmother declared by the Shastrees to be legal guardian of the minor, and in the event of her resigning, then the uncle, in preference to the half Sister.

The stepmother having by motion to the Court resigned her Claim, the Court's decreed the right of Guardianship to the uncle as claimed.

Appellants answered that Dhurmchund bequeathed all his property to Balmookoond under a Deed duly registered, and Respondent could have therefore no claim upon it. Manikchund, before his death, had also bequeathed the residue of his property, after payment of Funeral expenses, to his children, who had obtained their property. Appellant Lukmee, for herself, said if the Heirs of Manikchund had any claim, they might prefer it, but Respondent surely had none. With respect to the property

of

of Balmookoond himself, his Son was his Heir, and as she Lukmee, his stepmother, was his natural guardian, Respondent on that point must also fail.

He replied that Lukmee being only 14 years of age, he was her Guardian, and in fact it was Appellant Ram Baee, and her husband, who were desirous of getting the property into their hands under pretence of its being at the Suit of the Stepmother. He at the same time denied Appellant's claim to the Estates of Dhurmchund.

Appellant Ram Baee rejoined by accusing Lukmee of conspiring with Respondent for the purpose of making away with the Estate. She urged that since the separation of the Brothers, Respondent had no title to claim the Guardianship. Lukmee had from ignorance been persuaded to give in an agreement ceding her rights to Respondent, but from her nonage it could not be allowed to hold good, as a valid cession of those rights.

This charge against Lukmee, was caused by the latter having, by a motion to the Court, declared her unwillingness to thwart Respondent in his claim, which, though her name had been coupled with that of Ram Baee, she had no wish to dispute and was anxious to give up all right to the Guardianship of Bhugoo to Respondent, as best qualified to undertake it both for Bhugoo and herself. The Court had on the first motion of Respondent taken the Effects of the deceased under its custody.

Appellant exhibited the Farighkhut passed by Manikchund and Brothers on Thursday 7th Jesht Sood St. 1870, or 26th May A. D. 1814, to Balmookoond, as a full acquittance of all claims on their part to the share he had obtained of their Father's property, on the division of it.

Also, Copy of a Will and Deed of Gift dated 11th Jumadee ool Uvvul Hijree 1230, or 22d April 1815, and registered on the 3d May following, by which Dhurmchund bequeathed to Balmookoond the whole of his property of every discription, under

these

these provisions, that Balmookoond should perform the usual funeral ceremonies during a year, and pay to the Testator's two Daughters, named Jeevee Baee and Phoolkoonwur, as Legacies, to the first Rupees 200, in Cash, and Rupees 100 worth of ornaments, to the second the same, besides Rupees 300 more as Dowry on her marriage.

Respondent had nothing to say against either of these papers, but called certain persons to prove that Balmookoond left a Son Bhugoo; daughter, Appellant Ram Baee, and a Widow Lukmee. The same witnesses proved that Balmookoond succeeded to Dhurmchund's property, celebrated his funeral rites, and settled his daughters in marriage, and likewise performed the funeral ceremonies of Manikchund, and settled his Children in life. The Court conceived that the principal cause of dispute was the right assumed by Respondent of Guardianship over the young Minor, together with the ultimate object of preserving entire the Estates of the deceased.

The Court sent to the Shastrees for their Report and opinion, a Question, which after embracing the consanguinity and relationship subsisting between the parties, with the state of the family, as above shown, required to know, who of all the parties was the most proper Guardian to Bhugoo the Minor, considering that Lukmee had clearly resigned her right in favor of Respondent?

The Shastrees answered, the Boy Bhugoo himself, his own Mother being dead, is the true Heir to Balmookoond's property, but being still an Infant in law, and an Orphan (Unath) the Guardianship of his Estate, until he attains the age of sixteen years, devolves, under those circumstances upon the Prince, to preserve the Estate from the depredations of the Relations and others. Upon this point Munoo is explicit in the 27th Verse of his Eighth Chapter (1) (Udhyayu). According to his authority,

(1) "Thus long must the Prince take care of the Estate of a child, whether derived "to

ty, the child's stempother is in the place of a real Mother to him, (2) and must take care of him, providing him with Food and Raiment out of his share of the Estate. If she should decline the task, then let the Uncle, who has separated, have the care of the child. If he do not choose, then the half Sister of the child shall have charge of him. (This is the law of the Shastr.)

It appeared to the Court, that in conformity with the Dhurm Shastr, Appellant Lukmee was the natural Guardian, and Protector of the Minor Bhugoo, but that in the event of her refusing to accept the office, that the right devolved upon Respondent, the Paternal Uncle; and further that should he be likewise unwilling to take the charge, the duty would in that case fall upon the Appellant, Ram Baee, Sister to the Minor. And whereas the Appellant Lukmee had, by a motion preferred to the Court, expresed her unwillingness to take charge of the Minor, and her wish to place herself and (step) son under the protection of the Respondent, it was thereupon adjudged and decreed, that the Minor Bhugoo be made over to the care and Custody of his Paternal Uncle, Respondent, and the Estates belonging to the

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" to him by inheritance or otherwise, viz. until the child have become Suma Vrith, or " fully learned", and is no longer a child." The commentary on the verse, thus explains " it. " An Estate to which an Orphan child is Heir (or Master in expectancy) must be " taken care of by the Prince, to keep it safe from the unjust grasp of Relations and others; " and as before said." (in the commentary) " a man must remain a Bruhmcharyu, or " student" (counting from the time he puts on the Janvee, or Brahminical string between " 5 and 8 years of age, that is, when he quits infancy and enters childhood) during 36 years " or as his case will allow, before he be fit to be discharged from under his Tutor's care, " as having completed his Education, or become Suma Vrithu. When therefore this is " done he quits the Term of childhood. But the Student often is unable, from some " cause, to continue his education during the prescribed Term; therefore until the child- " hood of nature expires, must the Prince take care of the Orphan Minor's Estate. And " this natural Minority, or childhood, lasts until the attainment of sixteen years, for " Narud says, " He who has not reached his sixteenth year, is a *child*" (*Baluk*, the word used throughout.)

(2) Munoo Ch. 9th, Verse 183. " If among all the wives of the same husband, one " bring forth a Male child, Munoo has declared them all, by means of that son, to be " mothers of Male issue."

the Minor's late Father Balmookoond should, under the authority of the Dhurm Shastr, remain in the Custody of the Court during the Minority of Bhugoo, and that the wearing Apparel and household Utensils required for immediate use should be delivered over to Respondent, he furnishing security for their Value, and each party bearing their own Costs.

Decree 7th June 1821.

A Sister of Respondent then put in a motion for Guardianship of the Minor, accompanied with a charge against Respondent of intending to practise all manner of fraud, and of having actually deceived the Widow Lukmee. The last-mentioned person also, repenting of her motion for resigning all claim to Guardianship of the Minor, and placing herself under Respondent's protection, represented to the Court her intention of joining Ram Baee in appealing against the decision, and claiming, as was her right, the Guardianship of Bhugoo. The reason assigned for this was deceit practised by Respondent against her. She accordingly made herself a party to the Appeal.

Sudur Udalut, *Sitting Judge.* J. Sutherland, *Third Judge.*

The Grounds of Appeal, were the length of time that Respondent had been separate and distinct from his Brothers, added to want of confidence in him, as charged above by Respondent's Sister. But the Court could not discover from the fresh arguments adduced by Appellants, that the minor, or property, could be better disposed of than by the Decree of the Acting Judge. Respondent was legal Guardian after the Mother-in-law, in preference to the half Sister of the minor. The Mother-in-law had incapacitated herself by her own act, which she was not at liberty now to revoke, and independent of this, she was herself a minor, thus allowing the preference of the Court fairly to fall on Respondent, and in consequence it was determined to affirm the Decree passed by the acting Judge in his favor, Appellants bearing Costs in the Sudur Udalut.

Decree 17th Sept 1821.

SATURDAY 8TH DECEMBER 1821.

Present. J. Elphinston, *Chief Judge.*

Read the petition of Mt. Lukmee, and Mt. Ram Baee, setting

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J. Romer, 2d do.
E. Ironside, 4th do.

ting forth that although the Sudur Udalut had confirmed the Zilla Judge's decree, and adjudged that the Child, the Guardianship of whom gave rise to the action, should rest with Respondent, he, the Child, was unwilling to go to his Uncle, and they could not consent to his leaving them; they therefore prayed that he might be allowed to remain with them until such time as a decision should be given by the King in Council to whom they intended making an Appeal, and that the Zilla Court being about to enforce the decree, they further requested that it be directed to stay execution pending the result of the Appeal. The petitioners were informed that the decree passed must be carried into effect; that any representation they might have to make in relation to the decision passed by the Third Judge of the Sudur Udalut, they ought to bring before that Officer, who was alone competent to afford them redress, should he on just principles see ground for recommending a revision, and that it was at the option of the party to appeal to the King in Council or not, as they thought proper.

N°. 28.

BHUGOO BHAEE PRANWULUBH, ... *Appellant*,

VERSUS

KASEE BHAEE KUHANDAS. ..... *Respondent*.

Surat Udalut, J. Kenlish, *Acting Judge*.

RESPONDENT filed this Suit in the Surat Udalut on the 31st December 1819 stating that he had a claim against one Sheolal Gopal, on account of which the latter transferred to him, by an endorsement to that effect, a Draft, drawn in Sheolal's favor by Henrique Joze Loureiro, upon Appellant, for 465 Gold Dollars, and Rupees 8-2-0 in current money, which Draft Appellant had accepted, and actually paid the greatest part of it,

A gave a Draft in favor of B upon C, who accepted it, and B endorsed it over to D, his cre-

but

ditor, who sued both B and C, and obtained Judgment against them, jointly or severally, in a Decree affirmed by the Sudur Udalut.

but now refused to settle the balance, which Sheolal Gopal likewise refused to pay. The Value of the Dollars, at the rate of Rupees 18-2-0 per Dollar, was Rupees 8,602-2-0 which with the Rupees 8-2-0 made the amount of the Draft Rupees 8,611-0-0, with interest it amounted to Rupees 8,706 0-0 and from this deducting Rupees 7,588-3-23 paid by Appellant at various times, and indorsed on the Draft, left a balance still due of Rupees 1,117-0-77 which he prayed the Court to award to him either from the assigner, or from Appellant the acceptor, of the Draft. Sheolal, as Defendant in the Zilla Court, in answer fully admitted the truth of Respondent's statement, but pleaded that by his assignment of the Draft in payment to Respondent, the acceptor, Appellant, became alone liable for the debt, which must be considered paid by him, Sheolal, from the time when Respondent took the Draft in payment, and the claim was no longer tenable against him.

Appellant, Bhugoo Bhaee, also admitted having endorsed the Draft, but pleaded that in doing so, as the acceptor in the first instance, he had not contemplated, nor intended, rendering himself liable to any other person, if the Draft should be transferred, and that as his signature did not specify his liability on such transfer, nor mention Respondent's name, the new holder could not come on him for the amount.

Respondent referred the Court to the receipt on the back of the Draft, to prove such liability to have been acknowledged by Appellant, who rejoined that Respondent's name had not been mentioned by him when he accepted the Draft, and he was not therefore liable, and that Respondent ought to sue Sheolal who acknowledged the original debt to have been justly due.

The Draft was in Portuguese, and the Court recorded the following Translation, admitted by the Defendants to be a correct one.

BHUGGOO BHAEE PRANWULUBH,

Please pay to Sheolal Gopaldas, on my behalf, the sum of Four hundred and sixty five Gold Dollars (465) and Rupees eight and two quarters in Cash, and place the same on account of,

HENRIQUE JOSE LOUREIRO,

Portuguese Factory,
Surat, 12th December 1818.

Pay the above amount to Kasee Bhaee Kuhandas (Respondent)
(Signed) SHEOLAL GOPALDAS,

I agree to pay the amount.
Bhuggoo Bhaee Pranwulubh
(Respondent.)

The Draft in question was acknowledged by both the Defendants. who also admitted their respective signatures.

The Court did not, on consideration of the merits of the case, conceive Defendant Sheolal Gopaldas exonerated by the transfer, and considered him equally answerable and responsible for the amount. And with respect to the remaining Defendant (Appellant) Bhugoo Bhaee Pranwulubh, his acceptance of the Draft, as also the Receipts in his own hand writing on the back of the Draft, in which he acknowledged himself to have paid several sums to Respondent, as the holder under the transfer, clearly demonstrated that no misunderstanding as to the terms of the agreement could have been entertained by either of the Parties, and hence the responsibility of (Appellant) Bhugoo Bhaee Pranwulubh was fully and satisfactorily proved. Whereupon it was decreed, in consideration of its having been satisfactorily proved that Sheolal Gopaldas made the transfer, and (Appellant) Bhugoo Bhaee Pranwulubh accepted the Draft, that both Defendants be held jointly and severally answerable to Respondent and that they should pay him the Balance sued for, with costs and Interest calculated up to the date of decision.

Decree 30th April 1821.

Sudur Udalut.

Bhugoo Bhaee Pranwulubh alone appealed against this decision,

sion, on the same grounds he had taken in his defence in the Zilla Court, and the Sudur Udalut concurring in the reasons given by the Zilla Judge for his decision in favor of Respondent, affirmed his decree, and dismissed the Appeal with costs.

Sitting Judge. J. E[illegible]n, *Cai f Judge.*

Decree 27th August 1821.

No. 29.

NOOR BEEBEE, Widow of SHEKH HUMEED..... } *Appellant,*

VERSUS

Mt. RUHEEMA, Widow of HASHUM...*Respondent.*

Broach Udalut. T. Barnard, *Judge.*

APPELLANT filed her Suit on the 8th January 1819, against Respondent in the Broach Court in the amount of Rupees 5,000, value of property left by her husband Humeed, a Rungrez Cheepa, or Dyer, and Calico Printer.

A claim by Appellant, a Moohummudan widow, for recovery of her husband's effects, from the widow of her step son.

Deed of Gift by the husband in favour of his son's widow, in reversion from his own daughter, and acquittance from the Appellant, the mother-in-law, pleaded in bar.

Invalidity of the Deed of Gift under the Moohummudan Law, and of the acquittance under the stamp Regulation, taken by the Judge as grounds for granting Appellant's demand.

Exposition

Respondent appeared to defend the Suit, and gave in Durkhasts for certain documents, and named her witnesses, but failing to appear when the suit was subsequently called on for hearing, the Judge recorded the default in his proceedings, and an exparte decision was passed on the 30th March in Appellant's favor, on an exposition of the Moohummudan Law Officers, which declared "that the widow and the daughter of a "man, whose son died before him Childless, must succeed to "the inheritance of the Father, in preference to the widow of "the son, since her husband died before his Father."

Respondent

of the Provincial Court's Law Officers being in favor of the reversionary right of Respondent, and precedents existing in favor of the acquittance the Zilla Decree was reversed in favor of Respondent by a Decree affirmed by the Sudur Udalut.

Court of Appeal, J. Elphinston, *Chief Judge.* J. Romer, *2d do.* J. Sutherland, *3d do.* Interlocutory Decree 31st July 1819. Nature of Interlocutory Decrees explained.

Respondent Appealed against this decree, and the Provincial Court on the 31st July 1819, passed an Interlocutory Decree, reversing that of the Zilla Judge of Broach, in as much as default had not been proved, and remanded the suit back to the Zilla Court, in order that a Judgment might be passed on the merits of the case, Costs of Suit being left to be determined on a final decision.

The Zilla Judge, conceiving himself authorized by the provisions of Section 2d Regulation *11th of A. D. 1812* (*being* a Regulation, for the guidance of the Courts of Justice in case of a difference of opinion on the meaning and construction of the Regulations, which Section provides "that in all instances "wherein a precept issued by the Provincial Court of Appeal "(or Court of Circuit) to a Zilla Judge (or Magistrate) shall "appear to such Judge (or Magistrate) to be contrary to, or "unwarranted by, the existing Regulations, he is authorized "to state to the Provincial Court of Appeal (or Court of Circuit) "in what respect he considers their precept to be in deviation "from the Regulations, and suspend execution till receipt of a "second precept, in reply to his objections") explained that his Proceedings in the case were guided by Section 10th of Regulation 2d of A. D. 1800, the latter part of which Section states "that if a Defendant, who may have been served with a sum-"mons shall not appear [or if having appeared, he shall refuse "to give answer, or make other default, or admit the truth of "the Plaintiff's Bill of complaint] the Court, on examining the "allegations of the Plaintiff only, and the depositions of his

"witnesses,

" witnesses, is to decree and give judgment in the same man-
" ner as if the Defendant had appeared, answered, and entered
" into proof."

The Provincial Court in answer observed that the decision was reversed because no proof was found on the Record of the trial, of the alleged default by Defendant (now Respondent) by non appearance.

Suit revised in the Zilla Court.

The Plaint set forth, that Appellant's husband Hashum had by her a daughter named Huleema, still alive, and by a former Wife, a Son named Hashum, who married Respondent, and died before his Father, without leaving any Children by his Widow. That Respondent, her daughter-in-law, had lived since her Husband's death in Appellant's house, and though having no claim on the part of any Children by her husband, to his inheritance, she, Respondent, had possessed herself of Hashum's property, which belonged to Appellant both in her own right and as Guardian for her daughter. She sued therefore to recover it, consisting both of real and personal effects, from Respondent.

Respondent answered that Humeed did not marry Appellant till after the death of his Son Hashum, Respondent's Husband, and that Humeed, not trusting his Wife, constituted Respondent Trustee to all his property, and Guardian to his daughter Huleema, under a Will bequeathing the Estate to Respondent in trust for Huleema, with a reversion in Respondent's favor in case of Huleema's death. The Estate was managed accordingly by Respondent, and Appellant herself, nine months after her husband's death, had executed an agreement to Respondent expressing her acquiescence in the arrangement.

Appellant asserted this Will to be a Forgery, and with respect to the agreement, said she had formerly filed a Suit in the Udalut for this property, but at the instance of her friends, who persuaded her that her Right and that of her daughter did not admit of a question, was induced to withdraw it.

Respondent

Respondent declared she would prove both the Will, and the Farighkhut, which she thereupon exhibited.

The first Deed was a Hibbeh nama, or Deed of Gift, called also Tumleek nama, bearing date 16th Rumzan 1231 Hijree or 22d August 1815. After specifying the property, both inherited and acquired, belonging to the donor, it declared that he gave it all to Respondent, and to his daughter, and that it should all remain in his daughter-in-law's, Respondent's, possession for the sole use of his own daughter Huleema, then an Infant, till she came of age, when it was to be given to his daughter by Respondent. There was a clause, directing that in case of Respondent's death before Huleema, the latter should thereupon succeed to actual possession as Heiress, and in the event of Huleema's death, Respondent should succeed to the inheritance by virtue of this Deed of Gift.

Shekh Ghoolam Edroos proved execution of the Deed, as did Moohummud Yoosoof, another subscribing witness. The latter stated that the property remained joint between Humeed and Respondent after execution of the Deed, as before, till Humeed's death. The former witness said the Rule in cases of Gift was to give possession, but respecting the validity of a Deed, in which reversion from the first person named to another is provided for, the Heads of the Law alone were fit to pronounce. The Court asked its Moohummudan Law Officers, whether a Deed of Gift, like the one in question, which specified that the property to be given should descend from the person on whom it was thereby first bestowed, to another in reversion, was valid? and whether possession under a Deed of Gift was not necessary to render the Deed binding?

The Law Officers declared, that a Deed, such as the present, was not binding, and that of Gift, unless possession followed, was not binding.

The Court considered it unnecessary to take further evidence

to

to a Deed, declared illegal by its own Terms. With respect to the Farighkhut, the Court remarked that it was executed on stamped paper of four anas value, and under the Terms of Section 13th Regulation 14th of A. D. 1815, this paper could not be received in evidence. But if it were objected that it did not relate to any specific sum of money, or value due, as expressed in the marginal note to Section 37th of the same Regulation " Security Bonds and other Deeds not relating to any " specific sum of money, or any specific value, due, to be writ- " ten on stamped paper of the value of one Rupee," it still would require a Stamp of that value. But as the marginal note clearly shewed the meaning of the Text, (in which " Security Bonds" only are specified) which otherwise might be doubted, or if the marginal note be not considered of any authority, there was then no authority to exclude this paper from the Provisions of Section 13th.

The case having been remitted to the Provincial Court in this state, without passing a Decree, from a misconception of the nature of an Interlocutory decision, it was sent back to the Zilla Court, with an explanation that the Interlocutory decree required judgment to be passed. The Decree in the cause, which the Zilla Judge then pronounced, declared the Hebbeh Nama null and void, and the Farighkhut not conformable to the Regulation and therefore inadmissible, and gave a decision in favor of Appellant for the whole of the estate as sued for.

The Judge at the same time requested information on the following points relative to Interlocutory Decrees.

First.—Whether it was to be a general Rule, that a Zilla Judge was to pass a second Decree when an Interlocutory Decree was issued from the Provincial Court, or whether the Terms of the precept were to determine between his making a second Decree or forwarding his further proceedings for the Provincial Court to decide on?

Second.—Whether, when a Zilla Judge has passed a Second Decree

Decree in conformity to an Interlocutory one, he is to leave to the parties the care of making further representation to the Provincial Court, or to forward his additional proceedings to it?

Third.—If the Zilla Judge be to forward his additional Proceedings to the Provincial Court, whether he is to stay execution of his second Decree until Receipt of Instructions from the said Court, or to look to the parties for objections to it?

The Court of Appeal returned the following answers to these Queries.

First.—All Interlocutory Decrees provide for the subsequent proceedings of a Zilla Court, in as far as regards the passing a fresh decision.

Second.—It is to be considered a Rule, that the Zilla Judge is to forward his further Proceedings, held in obedience to the Interlocutory Decree, to the Provincial Court.

Third.—The Zilla Judge having forwarded his further Proceedings, is to stay execution of his second Decree, until receipt of Instructions from the Court of Appeal.

Court of Appeal,
J. Elphinston, *Chief Judge.*
J. Romer, *Second ditto.*
J. Sutherland, *Third ditto.*

The Zilla Court having thereupon passed a fresh decision on the merits of the case, the Provincial Court took up the cause again, in process of the Appeal still pending as the same cause before the Court, the provisions of their Interlocutory decree having been complied with.

The pleadings of the parties in Appeal were precisely the same as those in the Zilla Court, Respondent merely putting in an objection to the amount sued for by Appellant, and awarded by the Zilla Court, as being more than the real value of the Estate.

And now in the first place the Court took up the Farighkhut, or agreement, thrown out as an irregular document by the Zilla Judge. This Paper was as follows, Wednesday 9th Chytur Sood St. 1874 or 15th April 1818. I, Noor Beebee, Widow of Humeed

meed Rungrez Cheepee, write to Ruheema, Widow of Humeed's son, as follows. I have given up to you all the Effects of my husband Humeed, and his daughter also along with them, and now, with my own free will, and in perfect possession of my faculties, have passed you this Farighkhut. From this day forth I have no claim upon you. The above is true and binding, witness my hand,

NOOR BEEBEE,
Wife of the Rungrez Humeed.

Dyer ISMAEL GULHUN,
Ditto FAZUL ISMAEL,
Ditto RUHEEMET OOLLA FAZIL,
Ditto WULEE BHAEE KUREEM BHAEE,
Ditto MOOSA MOONEEM,
} WITNESSES.

The Court of Appeal, referring to a former decision "that "Receipts or Farighkhuts are not required by the Regulations "to be on stamped Paper," determined to overrule the Zilla Judge's objection to the Farighkhut in question being received in evidence, and by a Precept directed him to take such proof, in presence of the parties or their Wukeels, of the execution of the same by Appellant Noor Beebee, as Respondent might adduce.

Three out of five of the subscribing witnesses to the Farighkhut proved its execution; they said it was given in consequence of the quarrels of the parties. This Evidence the Zilla Judge handed up, expressing a doubt at the same time whether the Rule made by the Court of Appeal was intended for Application to the document in this case, which appeared to be not a Receipt, but a direct Transfer of Property.

The Court, handing up the Hibbeh nama to their Moohummeedan Law Officers, asked them to state its real claim to validity according to the Moohummudan Law.

The Law Officers, after recapitulating its provisions for a reversion of the Estate, declared it to come under the denomination

tion of a Will, because it provided for disposal of property. As such it gave each of the persons in it named, an interest in the property; but it was not correct because Huleema having an inherent right of inheritance in the Estate, a Will did not apply to her. With respect to Respondent, since she had no right to inherit, if the Heirs did not agree to the Will she would only be entitled to one third of the property. If the Heirs did agree to the will, her title to the whole property bequeathed would be good. Taking the case as if Respondent were not one of the Heirs, the Estate must be divided into three shares of which Respondent would receive one; (as all the Testator could give her without consent of the Heirs?) another would go to Huleema, and one fourth of the remaining share to Appellant, the Widow, leaving the other three fourths of this share for the other Heirs, in default of whom the daughter Huleema would get it. Her share of the property must remain with Respondent, as directed in the Will. Provided always, that if Appellant and the other Heirs resigned their claims to share, they were for ever barred from again claiming them.

On this exposition of the Law Officers respecting the Hibbeh Nama, and considering the Farighkhut executed by Appellant, the Court passed a final judgment, reversing the Decree of the Zilla Judge dated the 31st March 1819, by dismissing Appellant's claim, she bearing all Costs of Suit in both Courts.

Decree 21st March 1820.

Sudur Udalut, *Sitting Judge.* E Ironside, *Fourth Judge.*

The Appellant preferred a further Appeal to the Sudur Udalut in Bombay, through the Provincial Court, which was afterwards admitted on the File of the New Sudur Udalut. The grounds of Appeal were the same as before, Appellant adding that the other two unexamined witnesses to the Farighkhut could prove it to be a Forgery. The Court overruled this plea, and determined the Farighkhut to be valid, thinking Appellant ought to have urged this before, seeing that Respondent had in her original Durkhast included the names of all five, and it was probable these two might have changed sides, from many causes. But considering the opinion given by the Law Officers

Officers of the Provincial Court in some respects an erroneous one, the Court put the following Question to the Law Officer (one only sitting with a single Judge). Examining the Deed or Hibbeh Nama, and the Farighkhut, which has been proved before the Court, state the nature of the first Deed, and to whom it relates according to your law, and how the Farighkhut affects it?

The Qazee answered, The Hibbeh Nama is not correct, since the meaning of Hibbeh is to convey ownership, and to give possession, whilst this Deed specifies both a Gift or ownership, and an act of bequeathing, or a Will. But it can only have the effect of one of these, wherefore it can never be executed. The claim of Appellant is perfectly inadmissible, and void, after passing the Farighkhut as proved.

Appellant's claim being thus clearly voided by the Farighkhut, a decision would have been at once pronounced, for dismissing her Appeal, but the Sitting Judge considering the Qazee's opinion equally fatal to Respondent's claim under the Hibbeh nama confirmed by the Court of Appeal, conceived it necessary to refer the Case to a competent Court.

Competent Court, J. Romer, *Chief Judge*. J. Sutherland, *Second Judge*. Decree 28th March 1822.

The Court did not think it necessary to go beyond the disposal of the Appellant's claim, which, by the validity of the Farighkhut being established, became untenable. Whether the writing passed by the late Humeed was to be considered a legal and valid instrument need not at present be determined, since the rights of Huleema were not concluded by the decision against her mother, Appellant, on the grounds of the Farighkhut, but remained entirely unaffected by it, should it be deemed advisable to try the question on her part. With this reservation, the Sudur Udalut passed a Decree affirming the Decree of the late Provincial Court, and dismissing Appellant's claim with Costs.

Note. It appears proper, as intimately connected with the introduction of Interlocutory Decrees into the practice of the Superior

Superior Court, as yet unexplained to the lower Courts, to enter here, instead of with the particular suit which caused it (Report No. 14) a correspondence on the subject of them, between the new Court of Sudur Udalut, sitting at Surat, and the Fourth Judge of the same Court, holding a Session of Jail delivery at Ratnagiree, Zilla South Konkun, also sitting as a Court for the trial of Appeals in the first instance from the decision of the Judge of that Zilla, under the provisions of Sections 35th and 36th of Regulation 7th of A. D. 1820, (which direct a Puisne Judge of the Sudur Foujdaree Udalut, when on circuit in the Zilla of the Southern Conkan, to try Appeals, under the general Regulations, in causes in which the ground of action may arise within that remote district, and which shall have previously been regularly admitted upon the File of the Sudur Udalut. An order of Court by the Sudur Udalut to be the authority for the Judge's proceeding in such cases, and his Acts to be regulated by the like powers, and subject to the same restrictions, limitations, and exceptions, as are prescribed to the Zilla Court.) The correspondence commenced by the following letter from the Fourth Judge to the Register of the Court, under date 26th April 1822.

The first case laid before me was that of Hybut Rao Mankur versus Govind Rao Mankur; the order for the trial of this case is dated the 5th October 1821, and it directs the Zilla Judge if possible to bring it on for rehearing before the Third Judge on his arrival at this station.

I am informed by the Zilla Judge that the case was not ready for rehearing at the last circuit, and it in consequence was allowed to lie over, but although there is no direct order to me to proceed in it, the intention of the Court appears so manifest, that I trust I am not mistaken in supposing myself authorized to act, provided no other obstacle exists.

Referring however to the Decree of the Sudur Udalut dated 5th of May 1821, I perceive that the Judge of the Zilla was directed

directed " to proceed in the case as if no Decree had been pas-
" sed, and to allow Appellant to enter his pleadings, and proceed
" de novo." The commands of the Sudur Udalut have been obeyed, and the Zilla Judge, after receiving the usual pleadings, and hearing the evidence, has passed a new Decree, under date the 7th of December last, since which no proceedings have been held excepting that an order was passed on the 14th January, to suspend execution of the Decree pending the hearing of the appeal.

The decision of the Sudur Udalut already referred to, is, I observe, distinguished by the appellation of an Interlocutory Decree, and it is obvious, from the tenor of your letter, that the Judges of the Sudur Udalut consider the case open for rehearing without any further appeal. It is with great distrust of the accuracy of my own Judgment, therefore, that I am led to form a different conclusion, but with such an impression on my mind I could not, I conceive, do otherwise than suspend proceeding until I have had an opportunity of communicating with the Court.

I cannot discover that any such Instrument as an Interlocutory Decree, as distinguished in its effects from an ordinary Decree, is noticed in the Regulations.

The Appeal in this case was an ordinary Appeal; the Grounds on which the Decree was passed are not stated, but it is admitted by both parties before me, that the new trial was granted in consequence of the Defendant not having been present when the original Decree was pronounced.

The Appellant gained an important advantage in the opportunity thus afforded him of bringing forward arguments and evidence in support of his claim, which, had they been deemed conclusive, would have led to a favorable Decree, but because he has failed, it does not appear to me to follow that he can claim a rehearing before the Sudur Udalut, without filing a

new

new Petition of Appeal. I possess at present no competent means of knowing that the proceedings before the Zilla Judge have not satisfied the Plaintiff that his evidence is insufficient to maintain his claim, and what is more important, as the pleadings contained in the former Appeal cannot be supposed applicable to the proceedings in the subsequent trial before the Zilla Judge, the Plaintiff has had no opportunity of stating "the specific objections to the Judgment, and detailed grounds and reasons for preferring the Appeal," and the Defendant no opportunity of rebutting them.

You will be pleased to inform the Judges of the Sudur Udalut that I have explained to the parties the objections that occur to me to rehearing the Appeal, and have told them that all further proceedings in the case will for the present be suspended.

I have the honor to be,
Sir,
Your most obedient humble Servant,
(Signed) S. BABINGTON,
Fourth Judge.

The Court's answer was as follows.

To

S. BABINGTON Esquire,
Fourth Judge of the Sudur Udalut.

Sir,

With reference to your letter of the 26th Ultimo from Rutnagiree, regarding the Suit which was returned to the Zilla Judge of South Konkan, under an interlocutory Decree, for the purpose of being retried on its merits, I am directed by the Judges of the Sudur Udalut to inform you, that although not formally recognized by the Regulation, this Court, and the late Provincial Court of Appeal, adopted the practice of passing interlocutory decisions in cases where an erroneous judgment had been come to, from the construction of a Regulation, or adoption of a wrong principle in a decision foreign to the merits of a case, in order to prevent delay, to the parties, as well as to relieve them

them from the expense of additional Costs being incurred, in a matter wherein the Zilla Judge, and not the parties, may be considered to be in error.

Previous to the introduction of this measure, the power of the lower Court to interfere with the same cause a second time, was limited to taking such evidence as might be called for, and this Court could not by any other means return a suit to be reinvestigated on its merits on the spot, when local, or other cause rendered it necessary, as the existence of a decree prevented the Judge from proceeding beyond the point adjudged by him. An interlocutory decision removes every objection, and particular points being overruled by a formal act of the Superior Court, leaves the Zilla Judge unfettered to proceed with the case as if such points had never existed, and preserves to Appellant the important advantage of two hearings on the merits, which it would be manifestly unjust to deprive him of, or to call upon him to pay twice for the same in the Sudur Udalut.

The usual manner of proceeding with a returned case, wherein a second decree *has been (?)* passed by the lower Court, is to allow the Appellant to enter a supplemental petition (of Appeal?) on the stamp prescribed for pleadings in ordinary cases, which should contain a declaration of his having satisfied, or if the contrary, a statement of his specific objections to, the judgment, upon which supplemental pleading should also be admitted as in ordinary Appeals, and the Court then proceeds to pass a final decree under the Regulations. Should the Respondent be dissatisfied with the second decision founded on the Interlocutory judgment, an Appeal lies open to him as usual, in the ordinary manner.

Under this view, Huybut Rao Mankur should be called on for his supplemental petition, and in the event of his being dissatisfied, supplemental pleadings ought to be taken from the parties, in the manner above set forth.

The

The Judges consequently request you will be pleased to issue the necessary instructions to Mr. Hale, further directing him to bring the case on for hearing before the Judge who next proceeds to Rutnagiree on Circuit.

I have the houor to be &c.

(Signed.) E. GRANT,

Register.

N°. 30.

OOTTUMRAM and HIMMUTRAM, ...
Sons of WUJEHRAM DESSAEE. ..... } *APPELLANTS,*

VERSUS

MT. BHANEE, Widow, { *Gokool Lukmee-* }
and PITAMBER, Son, of { *das deceased.* } *RESPONDENTS.*

BroachUdalut, T. Barnard, *Judge.*

THIS Suit is the same as that referred to in Case No. 19 and which gave occasion to that Suit being filed in the Zilla Court. The Appellants sued Respondent Bhanee, in a Petition filed on the 10th April 1820 for recovery of Rupees 615, due on an account Current with Repondent's late husband, balance at his death Rupees 511, for which sum Respondent got one Kaleea Nana in A. S. 1872, or A. D. 1815 to stand Security by siguing, as recoverable from himself, the account against Respondent's husband. Of this sum Rupees 111-3-0 had been since repaid, and for the balance Principal, Rupees 399-1-0 and Interest Rupees 215-3-0 they now brought their action against Respondent, Bhanee, as responsible both on her own part and that of Pitambur, the minor under her Guardianship.

Claim against a widow, having an Infant son to recover from her balance of a debt due by her late husband for which she had given security.

Zilla Judge made the Decree ex gibla against the Estate of the deceased.

Sudur Udalut held the widow, by taking on herself Management of her husband's affairs, to be personally responsible for debts, and the

Respondent

Zilla Decree was made general against her both on this account and as guardian to her son.

Respondent appeared in Court, after a notice had been affixed upon her house, but declined giving in the answer in the usual way, verbally admitting the claim, and producing her husband's Books, which corresponded with the demand of Appellants, except in one Item, of Rupees 74-0-0 which the latter thereupon admitted had been paid by her.

Vide Report No. 19.

The account or Sameedustkhut, was dated 2d Kartik Sood, the second day of the New year A. S. 1872 corresponding with 3rd November 1815, in the name of Respondent and her Son, and signed at top under their names, by Haleea Nana, binding himself either to pay the Amount Balance, Rupees 511, or make them pay it. Two Items were entered as paid by Respondent within the next nine months, as credited to her in the Plaint.

The Court desired Appellants to point out what property Respondent had received from her husband. Two witnesses whom they called, proved that they saw certain effects in Gokool's house, or ornaments on his, and his Widow's, and son's persons, before his death. This the Court conceived not to be to the purpose, and therefore decreed that the amount found due by Respondent, Rupees 565-3-95, including Costs, should be paid out of such property of Respondent's deceased husband, as Appellants should point out.

Decree 1st June 1820.

This Appeal was made to prevent any preference being given to the Respondent by the decision in Case No. 19 whereby the Appellants' claim to Gokool's house, which was pointed out by them under their above decree, had been disallowed, and they now wished the Court so far to amend the Zilla Judge's Decree in their favor as to declare Respondent Bhanee personally responsible for her late husband's debt to them.

Sudur Udalut, *Sitting Judge.* J. Romer, *Second Judge.*

Respondent allowed Judgment to go by default. The Court, referring

referring to the proceedings of the Judge who sat on the former Appeal, concurred with him in opinion, " that the " Widow (Respondent Bhanee) having taken upon herself " her husband's concerns, and been acknowledged as in posses- " sion, she must be personally responsible" and a verbal reference having been made to the Shastree respecting the Widow's responsibility under the circumstances of the case, he informed the Court that the Widow was liable. Upon these grounds the Sitting Judge thought that the Decree of the Zilla Judge of Broach should be amended to the extent of making Respondent Bhanee (Pitambur being still a Minor) responsible for the amount awarded, and the Appeal was referred to a Court competent to make the amendment required.

The Appellants also desired relief on account of the law expenses which they had incurred by their dispute with Hurgovinddas, in consequence of the Zilla Judge's first Decree making the property of Gokool alone answerable for the amount of their claim, and thereby causing attachment of the House. He observed it was certainly hard that a Judgment, which was in the end found to be erroneous, should produce such consequences to the person in whose favor the ultimate decision was given, but a difficulty existed in determining by whom the reimbursement should be made; for Respondents in the present cause were not parties to the suit and its consequent Appeal in which these expenses were incurred. The Sitting Judge was not aware of any mode of relieving the Appellants to the extent desired, on the present Appeal, but referred this point also to the full Court, for such consideration as they might think it desired.

Competent Court, J. Sutherland, *Second Judge.* E. Ironside, *Third ditto.*

Decree 14th March 1822.

The Sudur Udalut resolved to amend the decision of the Judge of Broach, and directed that Respondent Bhanee should be held responsible personally, as Widow of Gokool, and on behalf of her Son Pitambur, a minor, for the amount awarded by the Zilla Decree, with interest at the rate of 9 per Cent from the date of it until the present date, Rupees 81-0-50, she also bearing Costs in the Sudur Udalut. No. 31.

N°. 31.

NURBHERAM TOOLJARAM.... .... APPELLANT,

VERSUS

BHAEEDAS and DUYARAM, Sons of BHUGWANDAS.... } RESPONDENTS.

Surat Udalut, J. Kentish, *Ating Judge.* Mork Ghanchee Cast.

Claim for the office of Nyat Guor, or officiating Priest of the Cast of Surat Ghanchees or Oilmen, laid by Appellant against certain of the members, in the shape of damages for employment of another person as Priest.

Thrown out in both Courts on proof that Appellant, though entitled by descent to the office, had acquiesced in the alienation of a half share by the last possessor in favor of the person employed by Respondents.

APPELLANT filed his Suit on the 5th March 1819 to establish his right to officiate as Nyat Guor of the Cast of Ghanchees, or Oilmen. It was stated in the Plaint, that for two hundred years past Appellant's Ancestors had held that Office in the Cast at Surat, consisting of 250 Members, or Yujmans, living within the Walls, and 150 Members Outside, making altogether 400, by none of whom was the right of the Family ever disputed, and their Representative was always called upon to Officiate as Nyat Guor on occasions of marriage, or mourning, receiving the usual Fees established in the Cast, without dispute. About a year since however, eight families had denied his right to the Guorship, and neglected to call for him on occasions when his services were required, and within the last week Respondents in particular had celebrated the marriages of three Members of their Family without calling in Appellant to Officiate, thus cheating him of his Rights; and his Character was also affected in the opinion of the Cast. He now therefore came forward, to recover from them Rupees 791 being Rupees 15 actual loss in Fees, and Rupees 776, as damages for loss of character, desiring leave to prove that by the law of the Shastr, Respondents were not at liberty to change their Nyat Guor, and were therefore justly liable in the damages he had sued for, and bound to pay the Fees above mentioned. In conclusion he declared his intention of filing a complaint thereafter against Kasee Juyanund, the person whom Respondents had called in to Officiate on these late occasions. Respondents in answer, declared that Appellant's claim as Sole Guor of the Cast was totally false, for there had been for a very long time two Guors, one alone being

ing incapable of performing all the duty. Appellant's Ancestor Deoshunkur, held the Office as one; the other Guorship belonged to Shakurram, and from him descended through Beneeram, to Kaseeram Juyanund. Appellant's claim to the Fees in preference to the latter was therefore unjust, as the latter had as much right to officiate for them as Appellant had. Appellant admitted that Deoshunkur and Shakurram held the Guorship, but said the shares of both had descended to him, and belonged to him by inheritance and to no other person, nor had any other ever officiated.

He called three witnesses, to prove that he was Guor of the Cast. Two of these persons denied all knowledge of Kaseeram being entitled to perform the functions of the office, and said Appellant derived his double Title by descent from both the former Guors. His marriage Fees were stated by the third to be a Rupee from the families both of the Bride and Bridegroom, or even as much as Rupees 10 from rich persons. This witness admitted that Kasee Bhut, claimed to officiate on the part of the Guor, whose family was extinct, both in marriages and funeral Ceremonies, and that out of the whole Cast, Appellant numbered two thirds among his Yujmans, and Kasee Bhut one third. He declared Appellant's right however to be paramount over the whole Cast, and that Kasee Bhut was not acknowledged. Yet this witness admitted that he himself had called in Kasee Bhut to officiate in his house after the death of Shakurram's daughter, during whose life, she and witness used to enjoy the Guorship, which he declared was never divided.

Respondents called upon Kaseeram Juyanund, who deposed, that he had officiated as Guor of the Ghanchees during 7 years on the part of Baee Buhin, his Mother's Aunt, who had about a year and half before her death constituted him her Heir by a Deed of Gift then in his possession. He had carried on the duties alone, and had never divided the Yujmans with Appellant, but each of them officiated in the families that called upon them respectively. He added that Appellant had himself signed, as

a witness, the Will of Baee Buhin in his favor, as had the Mookuddums of the Cast. By his account Wulubhram Wishweshwur, the last sole Guor, was the Uncle, both of Appellant, and of Baee Buhin's Father.

The Deed of Gift executed by Baee Buhin, daughter of Wulubhram son of Wishweshwur, was dated 4th Rujub, A. H. 1231, or 1st June A. D. 1816, and Registered on the 24th of the same month. Baee Buhin thereby gave over to Kaseeram and Sivanund, Sons of Juyanund, the whole of her property, houses and Effects, also her Rights over her Yujmans, and all other rights, privileges, and possessions whatsoever. This document bore the signature of Appellant, which he admitted, but pleaded that notwithstanding this, it was not binding, since he was totally ignorant of its contents, further than being told by Baee Buhin that it conveyed away only her husband's property, because the Deed was written in the Persian language.

He put in a Paper dated Thursday 9th Shravun Vud A. S. 1866, or 23d August 1810 being a Paper of Regulations drawn up by the Patel and whole of the Cast declaring,

First. That if any one, either man or Woman, should from that date drink any Spirits, or be guilty of theft on public occasions, he or she should be fined for the offence 0-2-50, and if the fine were resisted, should pay double the amount to Government.

Second. That when the Father of a Bride gives his daughter her portion (Mosula) on her proving with child, he should also present Rupees 2 to the Cast, a nd in case he should give no Portion, should still be held liable for 1 Rupee to the Cast.

Third.—That on occasion of a marriage, when the Bride's portion is demanded, the Punchayut should receive one Rupee.

Fourth.—That if any woman should hereafter go to a Liquor Shop she should be fined Rupees 0-2-50 and on refusal to pay this fine, should pay double the amount to Government.

Appellant's

Appellant's object in exhibiting this was to prove his Title to the Guorship thereby, as it was signed in the name of himself as Nyat Guor, by "all the Ghanchee Cast at Surat, both great "and Small."

With the same view, he exhibited another Paper of Regulations, dated Tuesday 5th Jesht Vud A. S. 1864, or 13th June 1808 consisting of 6 Articles.

First.—A Sentence of excommunication from Cast was pronounced against all and every one of the Surat Morh Ghanchees who should from that time, either smoke a Hookka, drink water, eat, or drink with, marry son or daughter to, invite to dinner, or demand in marriage, any person of the Ahmudabad Sect.

Second.—Should the Child of any one of the Surat Sect go and dine with one of the Amudabadkurs, his Father and mother must pay a fine of Rupees 5 to the Punchayut.

Third.—In case an Ahmudabadkur should take service with a Surat Ghanchee, the Master must neither smoke, nor drink, with him.

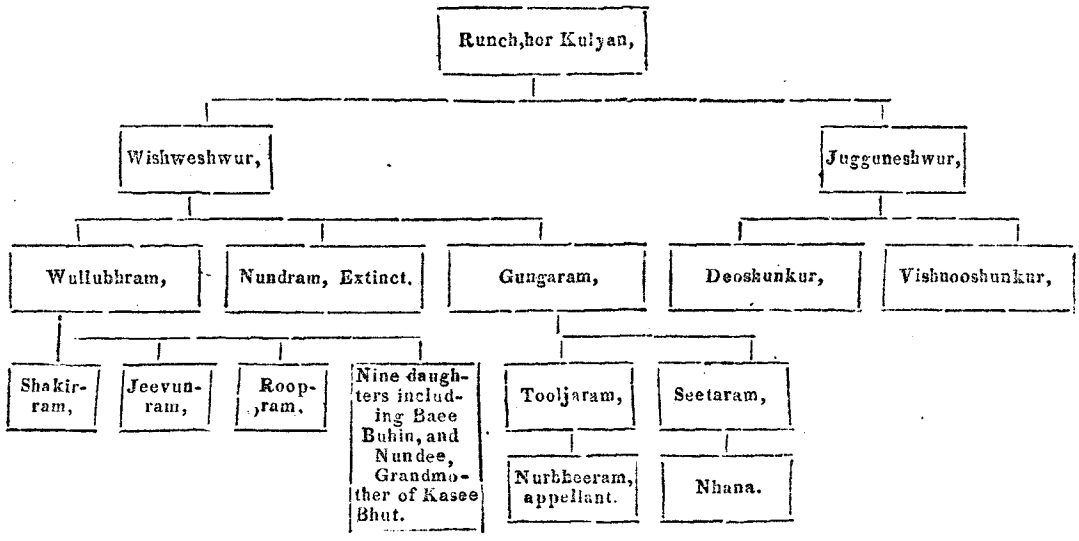
Fourth.—If on the contrary a Surat man took service with an Ahmudabadkur, he must be careful neither to smoke nor drink with his master, but must keep his Hookka and Lota separate.

Fifth.—But this excommunication was not to extend to connexions already made by marriage, respecting which it was provided that all the Bride's relations might visit each other's families.

Sixth.—No Member of their Sect was to invite one of the opposite Sect to his house on occasions of Feasts, and any one inviting his Relations out of the other Sect to dinner, should pay a fine of Rupees 5 to the Cast.

Any one breaking these Regulations, was to be fined Rupees 251 by, and for the benefit of, the Honorable Company's Government

vernment. Appellant shewed the following Genealogy of the Dnyat Guor which was admitted by Respondents to be correct.



Since the Question to be decided turned principally upon the right of inheritance, and whether the admission on the part of Appellant, of his having attested the Deed of Gift, ousted him of the right he would otherwise enjoy, the Court proposed a Question to the Shastrees upon these two points, stating the Genealogy as above shewn, and the facts of the case.

The Shastrees answered, that since Baee Buhin, who was regularly descended from Runch,hor Kulyan, had devised her right to Kaseeram, the Grandson of her own sister, by a Deed of Gift which was authenticated by the signature of Appellant, it was to be supposed that the three Sons of Wishweshwur had previously divided their Yujmans, and that the share of Wulubhram descended to Baee Buhin, and that this accounted for Appellant's witnessing the Deed. Baee Buhin's Title was thereby proved, but had Appellant not done so, the Deed of Gift would have been of no validity, for the Right or Office in dispute belonged properly to the Male line. As the case now stood, Kasee Bhut's right was confirmed, as entitled to inherit the share of Wulubhram.

From this Vyuvustha the Court conceived that, according

to

to the Shastr, the sole duties of the situation of Guor or spiritual priest, belonged of right to the Appellant, but owing to the Deed of Gift having received his express sanction, as fully attested by his own signature, Appellant retained no claim to perform that part of the Functions made over to Kasee Bhut, the person in whose favor the bequest was made. But the Court did not conceive itself at present called upon, in the absence of the individual chiefly interested, who had not been made a party to the Suit, to examine the question whether or not the legal right of Guor vested in Appellant, as it had been shewn that the person employed and entertained by the Respondents, acted under the express sanction and license of Appellant, it was resolved to dismiss the claim as groundless, frivolous, and vexatious, reserving to Appellant the right to sue Kasee Bhut, should he be of opinion that he had deprived him of any right or function connected with the Cast; and the suit was dismissed accordingly.

Decree 21st May 1821.

Sudur Udalut *Sitting Judge* J. Sutherland *2d Judge*

The grounds taken in Appeal were new, in as much as Appellant now represented that the families of Respondents belonged to his share of the Yujmans of the Cast, and not to Kasee Bhut, who held only fifty houses under the Deed of Gift. Respondents totally denied this, and respresented that no such division of the Cast existed, and that the members were allowed to employ whichever of the two they chose. It was observed by the Court, that the reasons for Appeal were founded on new Data, quite foreign to the grounds on which the Suit was originally brought, but being inclined to afford every facility to Appellant, permission was granted him to go on, and he was therefore called upon to prove, first, the division of the Cast between the Guors under a written document, as was necessary in such cases; and next, that Respondents fell under the share allotted to him on such division. He declared himself unable to produce such proof, and the Court did not conceive it necessary to delay proceeding to final judgment on this account. The decision was, that the separate rights of each Guor had not been

distinguished

distinguished so as to uphold the grounds for Appeal, and the decree passed by the Acting Judge was therefore affirmed, against Appellant, with Cost.

Decree 17th Sept. 1821.

N°. 32.

MOOHUMMUD ISMAEL bin SHEKH ISMAEL NARKUR..... } *APPELLANT,*

VERSUS

TATO RUGHOONATH BHAVE.....*RESPONDENT.*

THE Suit was filed on the 15th November 1820, and referred to the Register's Court.

South Konkun Udalut, W. Stubbs, *Register.*

Appellant said in his Plaint that the whole Village of Sungluth in the Turuf of Kher, Talooka Soovurndroog, belonged of old to his family, as Khots. One of Respondent's Ancestors was entertained by them as a Karkoon, for management of this Village, and on the strength of this the Karkoon claimed one fourth of the Village, and by his intrigues got from the Patel and Mhar a Title Deed for half the Village, as Wuttun belonging to him. Appellant counteracted the effects of this by a complaint to the authority of the district, which confirmed his Title to the whole. Respondent then took up his old ground of right to one fourth. The dispute continued until Summan Ashur A. D. 1817-18, when Sudaseo Mankeshwur, Soobedar of the province, gave Appellant a fresh Sunnud for the whole of it. Respondent however had filed a Suit this very year against Ubdoorrehman Khot, a relation of Appellant, for his half (or thirty second) share of the whole village, and got an exparte Decree against him. Appellant said that the Family had long before mortgaged one half of the village to Ballajee Punt Damle, and that Respondent was now in possession of the other half

Suit by Appellant for recovery of a half share in the Khotship of a village, thrown out by the Register's and Judge's Courts as having been before heard and determined when another person sued the same Respondent, for part of the same office.

Sudur Udalut held the Rule not to apply, unless the same cause of action were agitated between the same parties a second time, but the Appellant was nonsuited as not proving his case.

half of the village under his Decree against Ubdoorrehman's thirty second share of it. The yearly produce of half was equal to the sum of Rupees 296-1-00 in which Amount Appellant sued to try their right to it against Respondent.

Respondent totally denied this statement, declaring that the division of the village between him and the Narkurs, (Appellant's family) in equal shares, had subsisted for many years. This claim against Ubdoorrehman had been to recover possession of this half of the village, of which that person had forcibly dispossessed him in Tissa Ashur A. D. 1818 | 19 and a Decree was given in his favor for its restoration on the 20th April 1820, under which he still held it. The present claim relating to the same subject matter of dispute, was not therefore cognizable by the Regulations.

Appellant produced several documents. *The first* was an order from the Kumavisdar dated 25th Shaban Khumsu Subbaeen Miyat wu Uluf, A. D. 1775, *purporting to have been granted* in conformity to a Sunnud from the Sooba, denouncing the Wuttun Putr given by the Patel to Respondent to be a false Deed, and declaring the Narkurs to have been the Khotes in succession from the time of Seevajee, and their present representatives to be Ubdool Gunnee, Moohummud Sale, and Shekh Oosman, Narkurs.

Six Receipts for small sums, paid during the years Khumsu, Sittu, Subba and Summan, Ashur, or A. D. 1815, 16, 17, and 18; Three of these were in the name of Suyud Yoosoof Bokharee. One in that of Ubdoorrehman Narkur for grain delivered to the Troops of Sudaseo Mankeskwur, then moving about his district. The fifth was from the same authority in the name of Rughoonath Esswunt Jutar, and the last in that of Balajee Sudaseo Damle.

His next exhibit was a letter from Respondent to the Narkur family. But this paper (as the Judge of the Sudur Udalut observed

served) on the face of it, bore the most palpable alterations, throughout, in the words "Umche" and "Toomche" "Our's" and "your's" which, if read as originally written, would leave the sense as follows "that the whole village originally belonged "to Respondent's Ancestors, and that his father Rughoonath "Bhut Bhave, gave up one fourth of the village to Appellant, "and, (in the writer's own words *unaltered*), "your Ancestor" (the Narkur) "then offered to pay a little more money, and "take the whole half, and you began thereupon to claim half; "but as *you*" (altered from we) "said *you*" (we) "had not re- "ceived the money, a Punchayut settled that to prevent further "dispute they would cause him to execute a Wuttun Putr for "the fourth share he (Respondent's Father) had already given. "Wherefore" (it should have been) "the above named Nar- "kurs taking the Wuttun Putr, both besides settled their dis "pute."

But the erasure which was most clumsily executed *by changing yane into yas, leaving the Matra legible, and Gheoon* still legible into Deoon, altered the sense to "the dispute was set- "tled by the Narkurs giving to him, above named, a Wuttun "Putr." The Order alluded to by him in his petition that from Sudaseo Mankeshwur, dated 7th Zilhuz Summan Ashur, or 19th October 1817, Respondent on his part gave in an order dated 10th Moohurrum Thide Tissaeen, or A. D. 1791, from the Soobedar Moro Bapoojee, expressly declaring Respondent to be Khot of one half, and Appellant's Family Khots of the other half, of the village, and ordering the attachment on Respondent's half to be raised, and the half to be given to him.

He produced likewise accounts, one set of them bearing the great Seal, to shew that he held possession of half under this order, for the year Sittu, A. D. 1806.

It appeared from another order that Respondent's half was again attached to answer a claim of mortgage by Babjee Bhut Unchul, which being paid off by Respondent, the half Village

was

was by this order released, on the 19th Rumzan, Isne Ashur or A. D. 1812. Another, dated 12th Jumadee ool Akhir Subba Ashur, or 30th April 1817, for maintaining him in possession of his half share as of old held by him.

Another to the same effect, dated 25th Rubee ool Akhur Summan Ashur or 3d March 1818.

His Decree from the Register's Court, passed against Ubdoorrehman Narkur for the half of the village, on the 12th April 1820.

Appellant then put in an order from Bakajee Lukshumun Soobedar, dated 27th (and altered to the 28th) Rubee ool Akhur Summan Ashur, directing Shekh Ubdoolla and Ubdoorrehman Narkurs to be put in possession of the half village, as their's of right. Appellant called five witnesses. Three of them, Moossulmans, deposed to the truth of what he had stated in his Plaint, declaring that as long as they could remember Appellant had held three fourths, and Respondent one fourth, which fourth even he retained without any just title to it.

Gunojee Patel of Sangluth said that as long as he could recollect, the parties had managed the village in equal shares until the Narkur claimed another fourth, and then their possession varied. Respondent latterly got his half, and held it until the change of Government, when Appellant again attempted to get possession.

Govind Rao Muhratta, of the Village of Boruj corroborated this Respondent's witnesses, in number three, Brahmuns, and two of them Khots of Neighboring Villages, deposed that Respondent ever since they could remember had held half of the village, and Appellant's family the other half.

The Court held, that a Decree having been already passed in this case, in the Respondent's former claim against Ubdoorrehman Narkur, the present Appellant must be nonsuited under the provisions of Section 15th Regulation 3d A. D. 1799, which

which prohibited hearing any cause, the matter and subject of which had already been heard and determined by a former Decree.

Decree 29th January.

The Zilla Judge held, that as instead of the Defendant in the former Suit, Ubdoorrehman Khan, appealing against the exparte Decree, the present Appellant had filed a Suit on his own Account, the Court could not take cognizance of this second claim, and therefore, under the provisions of Section 15th Regulation 3d of 1799, the Register had been justified in nonsuiting the Appellant, and his Decree was affirmed.

Judges' Court in Appeal. W. B. Hockley, *Acting Judge.*

Decree 5th April 1821.

The Court held that the objection on which Appellant was nonsuited, was not a valid ground for dismissing the Suit, because the present suit did not prove to have been heard and determined by any former Judge, the parties in the former Suit not being the same as in this. But as Appellant had not succeeded in establishing, to the satisfaction of the Court, an exclusive claim to the village of Sungluth, his claim was on that ground dismissed in Appeal with Costs.

Sudur Udalut, Separate Sittings at Rutnagiree before S. Babington, *Fourth Judge.*

Decree 26th April 1822.

N°. 33.

MOOHUMMUD UMEER KHAN, commonly called MEERZA MOOHUMMUD JAN BAKUR KHAN, ... } *APPELLANT,*

VERSUS

JUMADAR BUCHA BHAEE ..... RESPONDENT.

APPELLANT filed his Suit in the Ahmudabad Court on the 23d April 1819 in the sum of Rupees 2,000, to recover a piece of ground from Respondent.

Ahmudabad Udalut, G. W. Anderson, *Judg*

It was stated in the Plaint, that Appellant had in the Muhella Rujub

Suit by Appellant to recover possession of ground sold by his mother to Respondent in virtue of a Deed of Gift of it to her by Appellant. Deed of Gift declared valid by the Moohummudan Law Officers, and the sale upheld on their authority.

Rujub Ulee, in the Pankor Naka of Ahmudabad, a piece of waste ground of 3000 Guz, in which was a tank, Bathing place, and well. This ground Appellant, on going to Cambay in A. S. 1857, or A. D. 1801, left in the charge of an Old woman, a relation of his, named Izzut oon Nisa Khanum. The next year on his going to Buroda previous to his Voyage to England, Respondent wished to purchase the ground of him, and the Deed was prepared. Appellant took and kept it, but refused to complete it by his signature. He soon after went to England, and Respondent then went to the old woman, and persuading her that Appellant was dead, got her to sell him the ground, upon which he had since raised buildings. Appellant having lately returned after a ten years' absence, now demanded back his ground, and prayed that the buildings erected by Respondent might be destroyed. He had received Rupees 175 from the Old Woman, and deposited it with a third person.

Respondent defended his Title on the grounds of Appellant having given the ground to the Old woman under a Deed still in her possession, and having passed her a Farighkhut for the amount sale, and that the Deewan was Security for the sale, which was authenticated by the Qazee.

Appellant replied that the Deed which he gave to the Old woman was not one of Gift but of Deposit; that he received the Amount of the Sale from her at her own desire, and had never passed any Farighkhut.

Respondent rejoined by asserting that Appellant terrified Izzut oon Nisa into giving up the money; and proceeding with his case, exhibited the Deed, which the Court remarked could not be called a regular Deed of Gift, though it had all the essentials of one. Its purport was thus. "The reason of writing is this, that I have given a piece of land, the property of my late Father Moohummud Bakur Khan, and now belonging to me, of my own free will to Izzut oon Nisa, Widow of my late Father,

who

who may either let, or sell it if she find a purchaser, at her own pleasure. Dated 1st Rujub A. H. 1216 A. D. 1801."

Appellant admitted this Deed, but said that after he had executed it, the negotiation between himself and Respondent at Buroda took place, and he handed up the Draft of the engagement which the latter had wished him there to execute dated 7th Zilkad A. H. 1220 in which the Price of ground was noted at Rupees 200, Respondent however totally denied the paper.

The Farighkhut, dated 28th Rubee oos Sanee, purported to be an acquittance in full, passed to Izzut oon Nisa for Rupees 174, Proceeds of the Sale of this ground to Respondent, " Sold to him by Izzut oon Nisa, acting for Meerza Moohum- " mud Umeen" (Appellant) who now admitted having passed it, but urged that it did not relate to, or affect, his claim on Respondent.

The Deed of sale was for Rupees 180, and dated 19th Zilhuz A. H. 1223 or A. D. 1808, at which period Appellant was not in India.

Appellant then exhibited a letter from Izzut oon Nisa, reproaching Appellant with preferring a claim to ground which he had previously given to her. His professed object in exhibiting such a document was to shew Respondent's art and cunning in prevailing on Izzut oon Nisa to write such a letter to him.

The Court referred the Deed, called a Deed of Gift, to the Moohummudan Law Officers, demanding of them to state whether the sale of the ground by Izzut oon Nisa would be held valid, as made under its authority? The Qazee said the sale was good and valid for two reasons. First, because the Deed, from its containing the words " Dadeh shood" " It was given," (by me) constituted her Owner and mistress of this ground by Gift. Although it was not in form of a Hibbeh nama, or Deed of Gift, and was in its language obscure, yet the Law would

would from those words hold it a Gift, good and valid, under which Izzut oon Nisa could sell the ground, if in her possession, whether Appellant were present or not. And after the sale was effected, Appellant retained no right to recover it, such being annulled by the Deed of Gift, for the property having been again disposed of, he could not now pretend that he would not agree to the Hibbeh nama. Again, he did not in that Deed specify that she should sell it to a particular person at a certain price, merely saying "if you find a purchaser you may sell it." From this passage, Izzut oon Nisa was decidedly empowered to sell the ground, as complete owner of it.

The above opinion was given from the Books Tutave Alumgeeree and Muzmoout ool Oosool, which were quoted as follows: In the first it is said, "when a Gift is made by pronouncing the words "I have made you master of this thing" it becomes a Gift in law." Again, by the words "I have made this property your's" "I have made it in your name," or by any other words of the same import, the right of property becomes vested in the Donee.—In the Muzmoout ool Oosool it is said. "Fourthly" (with respect to what had gone before on the subject of denying Gift made) "the change of property is like a change in "the nature of a thing; And the change, if actually taking "place, becomes the cause of a new property in that thing.—And "when a man is by another empowered to act for him, his word "on the part of his principal must be accepted as valid. Where-"fore, if the Attorney should say that he had sold, and delivered "over, any property, and received the price, or that it had pe-"rished, or that he had given it again to his Principal, and the "Principal should thereafter totally deny all such act and events, "the Attorney must nevertheless be declared competent, be-"cause possessing full powers to act in the premises in respect "to the property entrusted to him, and regarding the disposal of "which his word must be received as acting for the Owner."

The Court in summing up, observed the case was very simple,

the

the question being briefly whether a sale made by Izzut oon Nisa under the Grant made to her by Appellant, were binding as regarded him, and whether the document conveyed such a right of property as that the woman was competent to make the sale. The exposition of the law shewed that such right was conveyed, and such being in the Court's opinion consistent with plain sense, judgment was given against Appellant, he bearing all Costs of Suit.

Decree 24th April 1821.

The Court concurred in this view of the case, but put the Deed, with the opinion of the Zilla Law Officers, into the hands of those of the Sudur Udalut for their opinion, which they stated to be, that although the Deed was informal and incorrect, yet it conveyed to Izzut oon Nisa the power to receive rent for, or to sell, the ground, but further it could not be said whether it was a Hibbeh Nama, or what it was.

Sudur Udalut, *Sitting Judge*, J. Romer, *2d Judge*.

The Court affirmed the Decree of the Zilla Court, with Costs against Appellant.

Decree 9th January 1822.

N° 34.

MOOHUMMUD NUEEM MOOHUMMUD ARUF..... } *APPELLANT*,

VERSUS

THE COLLECTOR of BROACH.....*RESPONDENT*.

ON the 13th April 1821 the Collector of Broach filed a suit against Appellant, to recover from him Rupees 632-0-75 stating that he had appointed Appellant to superintend the Distillery, as Darogha, on a fixed monthly salary in the year 1819, and he retained the office still. During that time, 2033 Cart loads of Mowrah Berries had been brought into the warehouse. The Government Fee was one maund and three quarters out of each

Broach Udalut, T. Barnard, *Judge*.

Claim by the Broach Collector against the Distillery Darogha for recovery of a certain Fee on Mowra Ber-

ries, levied by him but not brought to account of Government.

Pleaded in defence, that it was not taken by Appellant but by a mehta authorized to receive it as a perquisite.

Zilla Judge held that Appellant in allowing the exaction rendered himself liable to Government for the amount.

Suder Udalut reversed this decision on the grounds that the perquisite, if legal, belonged to the receiver; if not, that Government could not sue for its amount.

each Cart, that of the Darogha, one quarter maund, which had been taken regularly; but Appellant, instead of bringing the Darogha's Quarter maund to account, had converted it to his own use, with more besides, The suit was brought therefore to recover from him the value of 2023 quarter maunds of Mowra, or 31 Kulsee, 9 maunds, 30 Seersh, which valued at Rupees 20 per Kulsee of 16 Maunds, gave the sum sued for.

Appellant answered, that he had taken no Mowrah out of the Carts as the Darogha's Fee, since no such fee was customary or in existence. Jeevajee Balajee who was formerly Darogha did certainly, on delivering over charge to Appellant, say "there are two kinds of Fees belonging to the Government, "one of a Maund and three quarters upon the common Carts "which bring the Mowrah to Market, the other of one Maund, "upon those which bring the Mowrah from the Vessels in the "river." These Fees he had regularly levied, but the charge of his having taken more for his own use was false. There was a Mehta who worked at the Distillery without pay, and as remuneration took about 10 Seers, or 1 Qr. Maund from each Cart, which perhaps was what was meant by the Darogha fee. But Government had no more right to this than they had to other Huks, or Fees levied in kind from the Mowrah Carts by some poor people. These last named Huks were denominated Moothee, and their produce was bought up by Government at a certain price, and carried to account under the head of Rezgee. Respondent denied that any Mehta was employed without a regular salary, to which Appellant rejoined that Jeevundas was employed long before he got the Daroghaship, and that he was removed at his instance as unfit for the Duty, and one Runchordas substituted in his stead. Jeevundas used to take the Fee in question, and it was continued by his successor, but Appellant never touched it.

Buhramjee, a Dealer in Mowrah, deposed that Appellant, as Darogha, levied the Government Huk of $1\frac{3}{4}$ maund from his

his Carts, and 8 seers or more besides were taken by a particular measure in the name of the Darogha. This last was collected by people under the authority of the Darogha.

Munoochur, a person who hung about the Distillery to procure trifling jobs, stated that he was sometimes employed to collect the Government Huk from the Mowrah Carts, and used to take on that account $1\frac{3}{4}$ maund of Berries from each, and the Moothee Huk measure, of 8 or 10 seers besides, all being brought to Appellant, as Darogha. This practice had prevailed for three or four years, from the time of Jeevajee Balajee, during whose Daroghaship, as well as that of Appellant, Jeevundas Mehta used to receive the Quarter maund in dispute, after it had been collected with the Government Huk, as above stated.

Nurbheram, the Mowrah weigher, deposed also, that the Government Huk, and the Moothee were both Collected and brought together to Appellant as Darogha, and that Jeevundas Mehta used to receive the latter from Appellant. The old Government Huk was 1 maund, but the amount taken by the Darogha, Peons &c. was afterwards brought to account of Government, and Jeevundas got the other Quarter Maund.

The evidence of Mr. Shubrick, late Collector of Broach, was taken by Commission before the Senior Magistrate of Police in Bombay, and was to the effect " that Jeevundas was " discharged on a representation from Appellant that he was " not required ;" the Deponent was not aware of having mentioned that another person should be entertained, but if the order was given it must be on record. Jeevundas used to receive a Moothee upon the Mowrah he collected.

Respondent then produced an account of Mowrah purchased daily by Government from various persons, who had each a Moothee or Fee in kind to a small amount from each Cart load. The Darogha Fee of 10 seers was therein entered, Jooguldas,

another

another Weigher at the warehouse, deposed to the effect of the former evidence respecting the disputed Fee. Runchor, the Mehta who succeeded Jeevundas, said he received the Fee after it had been levied by Appellant. Appellant urged that all the Fees were collected by some one of the establishment, and then divided out to the claimant. Respondent denied this, and the witness said each person entitled to a Fee collected it himself. The Fee was brought to account under the Head of Rezgee, and witness received its value from Government at the rate allowed for the Rezgee collections.

Jeevundas Mehta said he was employed under the Daroghas Sol Bhaee Jeevajee, and Appellant, altogether about 4 years. Neither of the former used to take the Darogha Fee, but left it as a perquisite for the collecting Mehta. Appellant had got him turned him out. The Daroghas had a salary of Rupees 40 per month.

From this evidence the Court was satisfied, that Appellant being managing Superintendent of the Mowrah collection, was directed by the Collector to dismiss from Office a Mehta who used to receive a Quantity of Mowrah as Salary; that it was sufficiently expressed that this Office was to be reduced, but Appellant notwithstanding, did employ another Mehta, and either gave him, or authorized his taking, the above mentioned Mowrah as salary, whereby he became responsible to Government for its value, and as the Mowrah in dispute was admitted to be of the value sued for, the Appellant was adjudged to pay the amount of Suit with Costs.

Decree 24th May 1821.

Sudur Udalut, *Sitting Judge.* J. Romer, *Second Judge.*

Appellant claimed redress on the ground that he was not responsible for the sums received by another as an established Fee, and proved to have passed into his hands, yielding at the same time a large profit to Government.

Respondent urged that the Mehta was not entitled to the Fee, since orders had been given to Appellant to reduce the appointment,

ment, and in continuing it he rendered himself liable for the Fees collected and paid away to a person unauthorized to receive them.

The Court, on the motion of Appellant, caused the Darogha's Dufturs to be forwarded from Broach, and on receipt of them caused its Officers to draw out an Account of the Mowrah Collections, in order to ascertain the quantity of Mowrah taken by Appellant, or allowed by him to be taken by persons in his employment, since this point must be proved before going into the question of whether he was authorized to allow any Moothee. The Extracts made from these Dufturs were from the 1st August 1818, to the 5th March 1821, and from them it appeared, that under the head of Rezgee, seven hundred and sixty Kulsees of Mowrah had been received during that time into the Sudur Distillery of Broach at the prices of the day, varying from 12 or 15 Rupees per Kulsee yielding a profit to Government of Rupees 5,698-2-00 which had been duly credited. Appellant was called on to explain from whom this Mowrah was received, and he stated it to be the aggregate of the Moothees of the following individuals. Ten Peons belonging to the Distillery, Ghulla-Munduvee and Foorza, establishments; seven or Eight Weighers, and about fifteen other persons, consisting of Beggars, a Mehta, Durwan, Hulalkhors, and common Laborers. It therefore appeared that a considerable quantity of Mowrah, besides the Surkar's share of 1¼ Maunds per Cartload, was taken as Moothees or Perquisites by a number of persons, among whom a Mehta was included; that this Mowrah was received by the Surkar at certain prices, varying according to the value of the article in the market, but regulated so as to produce a profit to Government, of about 25 per Cent on its resale. The Decree of the Zilla Court made the Appellant responsible for the aggregate of the Mehta's Moothees, or 31 Kulsees, 9 maunds, and 30 seers, at a valuation of Rupees 20 per Kulsee, Rupees 632 0-75. Now Government had already derived a profit of 25 per Cent on the receipt and resale of this Mowrah, while the highest price at which it was delivered or sold did not exceed Rupees 15-0-00

and

and might be as low as Rupees 12 per Kulsee. The principle therefore on which the account was framed contained a great proportion of overcharge. But the Court did not see how the Appellant could be justly called upon to answer at all, in a pecuniary way, to Government for the Moothees of Mowrah taken by the Mehtas employed at the Distillery. These Moothees were either authorized Perquisites in lieu of wages, or they were not. Mr. Shubrick said, the Mehta used to receive a Moothee upon the Mowrah he collected. If they were unlawful exactions the dealers in the Article were the injured parties, whose claim might not only lie against the persons taking such Moothees, but extend to the profits which the Surkar had derived by the receipt and resale of them. The Surkar had of itself, no right or lien on this Mowrah, and in the opinion of the Court could maintain no suit for recovery of the money, or profit derived from it by the persons taking it in Moothees. To hold the converse would be to obstruct the individual trading in the Article in his claim to recovery, if not totally to deprive him of such claim, supposing the Moothees were found to be unauthorized exactions. The Sitting Judge referred the case for reversal of the Zilla Decree to a competent Court.

Competent Court.
J. Sutherland, *Second Judge.*
B. Ironside, *Third Judge.*

The other Judges concurring in opinion with the Chief, late the Second, Judge, that Respondent had not established his claim to recover from Appellant, resolved to reverse the Zilla Court's Decree in his favor, adjudging Respondent also to pay Costs. In consequence of an omission in the Sudur Udalut's Decree, the Zilla Judge suspended execution of the Final Decree, and Appellant was referred for redress to the Sudur Udalut "since there appeared to be an error in the calculation "of the Costs incurred in the lower Court."

The Sudur Udalut observed, that it was not specified in what the error consisted, but be the error what it might, there was no sufficient reason for suspending execution of the Decree, nor for putting the Appellant to the expense and trouble of coming to

Surat

Surat to have an error rectified, which had not been committed by him. The Zilla Judge ought at least to have executed so much of the Decree as agreed with his information in regard to the correct amount of Costs in the lower Court, himself making any reference to the Sudur Udalut which might appear necessary for rectifying the error, and he was directed now so to proceed. It was explained in the Return to this precept that the Sudur Udalut's Decree did not include, among the Costs to be paid to Appellant, those incurred on his defence in the lower Court, Rupees 40-0-44, and he had refused to receive the amount actually specified, whilst Respondent pleaded that the Zilla Court of itself possessed no authority to exact the deficiency until empowered so to do by the Sudur Udalut, and until a further reference were made to the Honorable the Governor in Council for payment.

The Sudur Udalut amended the Bill of Costs by inserting the amount of Rupees 40-0-44 in the Bill and the amount of the full Costs Rupees 109-2-88 was paid to Appellant by Respondent within one month, the time specified for a Return of execution being had.

Decree 14th March 1822.

N°. 35.

BALSETH HURSETH MAHADEEK,.....Appellant,

VERSUS

LUKSHUMUN BULLAL KURUNDEEKUR,..... } *Respondent.*

RESPONDENT sued Appellant in the Zilla Court on the 1st June 1820, to recover from him possession of the village of Peesaee, situated in the Turuf of Nandoo Palwun, and Talooka Soovurndroog. He stated, that the Khotee of the village of Peesaee having lapsed to Government for want of Heirs in the family

South Konkun Udalut, V. Hale, *Judge.*

Claim for the Khotee of a Village supported on the principle that a regular decision of a Punchayut confirmed by the officer of the native Government and followed by possession must be maintained against a subsequent reversal by the same authority without good reason assigned.

family that formerly held it, Government, by a Sunnud dated the 26th Shaban in the year Sittu Subbaeen, A. D. 1776, granted it in three shares, one to Sudaseo Wittul, a second to Respondent's Ancestors, and the third to those of Appellant. Sudaseo Wittul entrusted the management of his share to Respondent, to whom his Son Ragho Sudaseo finally sold it for Rupees 234-1 50, and 16 Khundees 3 maunds and 1½ Seer of grain. On the 5th Margsirsh Sood 1706, or A. D. 1785, Appellant's Ancestor went abroad, and the next year, the Government obliged Respondent to make good the demands on that person's share. He held the whole village in this way until Thide Miyaten wu Uiuf or A. D. 1801, when Appellant's father returned, and arranging matters with Furke, the Moamlutdar, got possession, through his assistance, of the whole village. Respondent complained against this act, and got an order for holding the village in the old way, according to their shares. Appellant again got the whole village for three years whilst Respondent was absent in the Koolaba country (Angria's) but in Thide Ashur or A. D. 1811, he returned and held his two third share again, till Khumsu Ashur, 1815, when Appellant got possession. In Sittu Ashur A. D. 1816, Respondent disputed this, and a Punchayut was assembled at Poona, which determined that Appellant had no claim whatever, and the Government endowed Respondent's Father afresh with the Khotee of the whole village, which he held during the remaining term of the Peshwa's Government, and under that of the Company, till Summun Ashur A. D. 1817 / 18, when Appellant seized it, and the present action was brought to eject him. The Value of it was stated at Rupees 365, after deducting Appellant's own shares, and he sued besides for Rupees 160, profit for two years.

Appellant suffered Judgment to go by default, though he had given Security, the notice for which is by the practise of that Court always served with the notice for trial, in consequence of the

the distance of the place of residence of the parties in most Suits, from the Seat of the Zillà Court.

Respondent was therefore called on for his proofs, and he filed the following exhibits.

Receipts for the Ghur Puttee, and Mhar's Rabta (commutation Tax instead of so many days' labor in the service of Government, in the Konkun four days in the month, during which every Mhar in the country is obliged to work or pay it) for the years, Subba, and Tissa Subbaeen A. D. 1777, and 79; Sittu, Subba, Summan; and Arba, Sittu, Summan, Ashur, A. D. 1806,-7,-8, and 1814,-16, and 18. They were all either in the name of his Father Abajee Lukshumun, of his Uncle, or other member of their family.

His next was a Sunnud from Sudaseo Mankeshwur, Soobedar of Soovurndroog Talooka, dated 10th Jumadee ool Akhur Sittu Miyaten wu Uluf, A. D. 1806. It was given in the name of Balajee Chintamun Kurundeekur, and after reciting Respondent's story, as stated in his Plaint, but more in detail, recorded the former decision of Moro Bapoojee Furke, Soobedar of the year Sittu Subbueen, "which declared the claim of Appellant's family to be false, since a formal assignment of the Village had been made in half shares, by Khund Sett of his half in mortgage to Sudaseo Wittul, and by his Brother Buhir Sett of the other half to Respondent's relation Balajee Chintamun; and thereupon it was decided, that to settle the dispute the parties should each have a third share, which was assigned accordingly, thus leaving to Khund Sett and Buhir Sett one third between them." The Sunnud then recorded all the orders passed on the case by former authorities, and proceeded to decree, that the Khotee should remain in three shares, as settled by the former Sunnud, two being taken by Balajee Chintamun Kurundeekur, viz. his own share and that bought of Sudaseo Wittul; and to the family of Khund Sett, including Appellant, the remaining third.

He

He exhibited likewise two orders from the same authority in the years Sittu Miyaten wu Uluf, and Arba Ashur, A. D. 1806 and 1814, appointing him to manage the village for those years. The award of the Punchayut, dated 25th Shaban Summan Ashur or 11th July 1817, declaring the arrangement in the Sunnud of Sittu Subbaeen to be final, and that the parties must abide by that division.

A Sunnud from the Sooba confirming that award, and granting this Sunnud as a Title Deed " according to the recommen- " dation of the Punchayut."

Respondent proved his possession under the Company's Government by various orders and receipts. Two witnesses stated generally to the effect of the Respondent's Plaint.

The Court was of opinion that Respondent was, in virtue of the award of Arbitration and Sunnud subsequently issued thereupon, clearly to be recognized as the legal proprietor of the property he claimed, for though Appellant might probably be in possession of some documents from Subordinate Officers of the late Government, under which he held pessession, yet the Sunnud above mentioned had evidently been duly executed, and Respondent had enjoyed the Village under its provisions. The Court considered that no decree of a later date ought to set aside so apparently regular a Decree, at a period bordering on the acquisition of the Country by the British. The village was therefore decreed to Respondent as sued for, but with respect to the years' profits claimed, sufficient evidence was not before the Court to pronounce what sum was due. Appellant was therefore directed to render a full account of all receipts since he had held the Village, or to pay the sum of Rupees 160, as sued for under the head of profits, all Costs being awarded against him.

Decree 23d June 1820.

Sudur Udalut, *Sitting Judge.* J. Romer, *Second Judge.*

Appellant in his Appeal, after denying in toto all the facts shewn by Respondent in his case in the Zilla Court, produced a Sunnud from Sudaseo Mankeshwur dated 20th Zilkad Summan Ashur or 2d October 1817 in order by it to prove that the

two

two Deeds, on the validity of which the Zilla Decree against him was founded, were of no validity at all.

The Soobedar in this Deed entered into the merits of the case, upon four different Kulums, or charges, of Appellant, and professed to be satisfied, from a sight of Appellant's old documents, of the truth of his claim and of the injustice of Respondent's, thereupon pronouncing the Sunnud obtained by Respondent on the award, and the award itself to be improper documents, and therefore null and void, wherefore this Sunnud was issued in abrogation of them, and in confirmation of Appellant's claim.

The Court after duly considering the point at issue, which of these decisions ought to be upheld, determined to recognise, as valid, the earliest decision, for these reasons, that the first rested on the award of a Punchayut, and might be supposed to have been made after due enquiry and deliberation. The Second did not attribute corrupt or partial motives to the Punchayut, but proceeded to reverse the prior Judgment of the Soobedar himself, upon what might be called a review of the case, without having any new information before the reviewing authority, and it was safer to allow authority to the first act of competent power, founded upon good and openly stated grounds, than to follow a quickly succeeding change of opinion and consequent reversal of the act, to which no adequate cause was shewn. The Zilla Decree was therefore affirmed with Costs against Appellant.

Decree 21st January 1822.

No. 36.

N° 36.

KESHOW RAO DIWAKUR, Heir, and the Estate, of DIWAKUR BHUT GORBOLE deceased..... } *APPELLANT,*

VERSUS

NARO JUNARDHUN PATUNKUR, afterwards his Heir, BALAJEE NARAYUN PATUNKUR..... } *RESPONDENT.*

North Konkan Udalut, W. A. Jones, *Acting Judge,*

RESPONDENT, Naro Junardhun Patunkur, sued the present Appellant, in a Suit filed on the 9th December 1819, to recover from him the sum of Rupees 1600, being the balance still due of Rupees 2250 amount of an Annuity for the last 17 years at Rupees 150 per annum. Respondent said that Krishn Rao Diwakur, Appellant's Elder Brother, being desirous of marrying again, his Father was looking out for a Wife for him, and demanded the daughter of Respondent, who agreed, on condition that the other would procure a wife for one of Respondent's Sons, and provide the expense of that Son's marriage, and would pay to Naro Junardhun the sum of Rupees 150 yearly until such marriage should take place. These conditions were actually drawn up and executed by Keshow Rao, and Respondent had received various sums at different times, amounting to Rupees 949-2-0. Diwakur Bhut was now dead, and he came into Court to recover the balance, leaving the expenses of his Son's marriage to be recovered by another Suit, since that part of the agreement was on a different instrument.

Two agreements executed in writing by the Father of Appellant to that of Respondent, one to provide a Bride for a son of the latter and to bear the expense of the marriage; the other to pay a Salary of Rupees 150 per annum, until the marriage took place.

Decided by the Zilla Judge under a Vyuvustha of the Hindoo Law Officers, that Appellant, as Heir of the contractor, must pay the amount sued for being the balance of the Salary still due after a lapse of 17 years.

Sudur Udalut held under the opinion of their Shastrees that the balance sued for could not be recovered from the Heir of the contractor, he being

Appellant said his father had been dead many years, and that seventeen years had elapsed since he wrote the agreement, which was true enough as Respondent had stated, but he had forgotten to add that his own son had fallen into a well, and was drowned, which surely exonerated Appellant from the performance of an impossible condition, or the payment of its penalty. The marriage of Respondent's daughter with his

Brother

Brother Krishn Rao, was also long ago celebrated, and all the conditions annexed to its performance had been duly fulfilled. exempted from such debt by positive law.

Respondent replied that he had originally three sons, of whom one was already married before the agreement was executed. The other two were respectively four, and two and a half, years' old, but the Eldest of these two was drowned only a week after the marriage of his Sister with Krishn Rao, and as the agreement did not specify the name of either of them, it was still valid as unfulfilled, and that this was the true intent, was evident from Diwakur Bhut continuing for a long time afterwards to pay up the annuity. He added that he complained at Poona of non-execution of this agreement, and procured an order on Ram Bhao, Soobedar of Busseen, where Appellant lived, but he would not attend to it.

Appellant again in rejoinder declared that the son who was drowned was the one intended by the agreement, and that his father had been dead now seven years. Respondent Naro Junardhun dying in this stage of the case, his son moved the Court for permission to carry on the suit, which was granted.

The agreement upon which Respondent sued was handed up, as well as that for the marriage of his Son.

The former was as follows.

I Diwakur Bhut Gorbole, do write to you, Naro Punt Patunkur, that since you have consented to give your daughter in marriage to my Son, Krishn Rao, I hereby agree to provide a suitable match for your son, and to allow you pay for one man at Rupees 150 per annum, until the marriage takes place, which sum I will faithfully pay, and in earnest thereof now give you Rupees 300, as two years' salary in advance, as agreed upon in presence of Mahadajee Govind Joshee, and Gungadhur Bhut Gadgil Pooranik. And I have passed you a separate writing for bringing about the marriage of your Son, which I will duly perform,

perform, and will continue to pay you the salary above agreed upon, until it takes place. Dated 2nd Phalgoon Sood 1724, Doondoobheenam of Sumvutsur, or A. D. 1802.

(Signed) DIWAKUR BHUT GORBOLE.

BHIKAJEE KESHOW KETKUR,
GUNGADHUR BHUT POORANEEK, } Witnesses.

The other agreement, for the marriage of the former Respondent's son, was executed on the same date in presence of the same witnesses, and was as follows. I Diwakur Bhut Gorbole, do write to you, Naro Punt Patunkur, that as you have consented to marry your daughter to my son Krishn Raó, I agreed on the other hand to get your son married, and hereby declare that I will obtain for your son a suitable and unblemished Bride, and will bear the expense of his marriage with her. The agreements were admitted by Appellant, and Respondent gave in an account of the sums received from Appellant, Rupees 780-2-37 up to A. S. 1868 or A. D. 1812. One witness attended on the part of Appellant, and deposed to his having refused any longer to pay the annuity, in consequence of the death of Respondent's Son. This was about 8 years ago. He knew nothing about the agreement, nor to which son of Respondent it referred, but knew one was dead and the other two were alive.

The Court, considering the fact of the agreement having been entered into and sums of money having at various times been paid to the father of Respondent, clearly established, and also admitted by Appellant, put a question to the Shastree, first observing to him that Rupees 551-2-0 were due upon the agreement by Diwakur Bhut himself at his death, and the balance of the sum sued for had since accumulated, and that this was not a case of debt for value received, nor upon Bond, but a simple agreement, whether the engagement was binding to the full upon the Heir, and the Estate, of Diwakur Bhut, or if not, whether they would be still liable for the balance due at the date of Diwakur Bhut's death? Second, whether Balajee, the present Respondent,

pondent, could legally sue for performance of such a contract, entered into between his Father and Diwakur Bhut?

He said, these are the words of Narud in the Mitakshura, "Those skilled in distinguishing Gifts have pronounced to be a "Gift, whatever is given as the price of a daughter (Stree "Shoolk,) or compensation for a particular favor." (1) From which is to be understood, that whatever money may be so given to a Girl's Father is not to be recovered. Wherefore in the present case, since the Father of the Bridegroom engaged by a writing to give to the Bride's father "money, denominated "Shoolk," for the purpose of getting his daughter; and since the Giver and Receiver acted upon the writing for ten years; moreover, as Custom is on their side, it (the money) cannot be recovered. As the Giver and Receiver are both dead, the Heir (of the Giver), must pay up the balance to the Son of the Receiver.

He said in plain language,

First.—That Appellant ought to pay both the balance due at Diwakur Bhut's death, and the accumulated balance since that time.

Second.—That the claim for performance of the marriage still lay against Diwakur Bhut's Heir, Appellant, and

Third.—That the Heir of Naro Punt Patunkur was competent to continue his Father's action, and to recover from Appellant, as Diwakur Bhut's Heir.

Upon this exposition the Court decreed, that Appellant should pay to Respondent the sum sued for with Costs. The only objection raised by him which appeared to have any weight, that the second son, for whom the wife was intended, was drowned, was not admitted by the Court, from the circumstance of no one

(1) Book Second, leaf 69th, page 1st, line 16th, Colc. Dig. 2d 175.

one of the three Sons of Respondent's father being particularly specified in the agreement, and also, that his Father continued to pay money to that of Respondent, after the death of this second son.

Decree 26th June 1821.

Sudur Udalut, *Sitting Judge.* J. Romer, *Second Judge.*

The Sitting Judge thought a more comprehensive question than that put to the Zilla Shastree, was necessary, and therefore framed the following for the Shastree of the Sudur Udalut to reply to.

First.—Whether it was agreeable to the Law of the Shastr for two Fathers to enter into such engagements?

Second.—Whether the engagements were invalidated by the omission of the name of the son of Naro Junardhun in them, or whether it could lawfully be assumed that it did not apply to a particular Son, but to any of the sons of Naro Junardhun?

Third.—If the answer to the first were in the affirmative, whether it were incumbent on the Sovereign to enforce the performance of such an engagement, and if it were, whether the death, subsequent to this engagement, of one of Naro Junardhun's two unmarried Sons, and the marriage of the other, at Naro Junardhun's own expense afterwards, altered this right of the sovereign to carry into effect the letter of the engagement, seeing that it did not bind Diwakur Bhut to reimburse to Naro Junardhun any expense he might incur in marrying his Son himself.

Fourth.—To what extent, and up to what time, the first engagement was binding on the Son of Diwakur Bhut, since both he and Naro Junardhun were dead, and no Son of the latter remained unmarried?

The Shastree replied as follows.

First.—Eight kinds of marriage are named in the Shastr (2) and when the Bride's Father receives money from that of the

(2) Munoo, Chap. 3d, Verse 20th, Ad. 34th.

the Bridegroom, such marriage comes under the denomination of " Asoor Vivah" " unhallowed marriage," and it is improper both for the Brahmun and other (the four great) classes to enter into such a marriage (3) Thus says the Shastr; nevertheless it has been the custom of the world for many years past for Brahmuns and others, many in number, to celebrate such marriages, and no one is expelled from Cast for such act Wherefore the two contracts executed between Diwakur Bhut and Naro Junardhun were warranted by the Custom of the Country and Times.

Second.—Although the name of Naro Junardhun's son was not inserted, the engagement might be made in its present state by the example of a Dan Sunkulp (4) and though the name of a particular Son was not inserted, I think the engagement may be held to relate to any unmarried (Koonvaroo) Son of Naro Junardhun, because the words " Son" is written, without specifying a particular one. But with the exception of the son, neither the Brother nor other Heir of Naro Junardhun, has any claim to enforce performance of the contract.

Third.—If the person contracting should fail to fulfil his engagement, the Sovereign may oblige him to do so. Though one of Naro Junardhun's sons was drowned, still the Sovereign may cause celebration of the marriage of the remaining unmarried Son, by the contractor, and payment of the expenses to be made by him. And since he did not procure performance of the marriage, and the other person obtained a Bride for his Son elsewhere, the Sovereign should cause the expense of such marriage to be paid by the person contracting, for so the agreement warrants being done. Diwakur Bhut bound himself by this writing, and therefore the Sovereign should exact

(3) The same, Verse 31st.

(4) A Vow to give away a Cow or other thing to a Brahmun, without specifying the name of any individual; such Vow is binding on the giver.

act performance of its conditions from the writer, as he would payment of a debt by a debtor.

Fourth.—No claim of Naro Junardhun or of his Heir, remains against the Son of Diwakur Bhut for performance of so much of the engagement as Diwakur Bhut left undone, for this reason, that though the Shastr ordains that the Son shall pay the debts of his Father to whatever they may amount, with their interest, whether there be, or be not, property of his Father, (5) yet he is not bound to pay a debt (Runu) of this description. For these are the words of Yagnyuwulkyu in the Mitakshura. (6) "The Balance of a debt contracted for Liquor, "Sexual intercourse, or Gambling; a Fine; the amount of a "toll, (Shoolk;) and a gift; and "Vrithu Dan" that is money "promised to Swindlers, such debt of his Father, a son shall "not pay." From this it is clear, that Diwakur Bhut would have been justly bound to pay the amount due under these two engagements, if Naro Junardhun had taken measures to enforce them during Diwakur Bhut's life time, and the Sovereign must have obliged him, if unwilling. But this debt, contracted by Diwakur Bhut on account of the girl, comes under the above denomination of Shoolk, of which the Shastr does not enjoin the Sovereign to cause payment from the son. The above exposition is agreeable to the Mitakshura, Munoo, Muyookhu, and Vyuvuharu Purisishtu.

The Court observed, that this answer was conclusive on the last point in the question referred; a son, agreeable to this exposition, was not liable for certain debts or engagements of his Father, among which was that of giving money, or agreeing to give money,

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(5) Mit. Book Second, leaf 20th, page 1st, line 11th, Yagnyuwulkyu "The father "being gone to a foreign Country, or deceased, or wholly immersed in Vices, the sons or "their sons must pay the debt." The commentator says "even if the father leave no wealth." Cole. Dig 1st 268.

(6) Mit. Book Second, leaf 19th, page 2d, line 8th, Cole. Dig. Vol. 1st, page 311, where "Vrithu Dan" is explained.

money, in consideration of receiving a girl from her Family to be married to his son, which came under the denomination of Shoolk, and it was forbidden in the Shastr. In the case before the Court, common sense and the Hindoo Law agreed, since the failure of Diwakur Bhut to perform his promise of bearing the expense of the marriage of one of Naro Junardhun's sons would under the construction put upon his engagement by the Zilla Court of the North Konkan through the exposition of its Law Officer, have had the effect of entailing upon his heirs the payment of a sum, which would thus become an annuity in perpetuity, without any equivalent having been given. On these grounds the Sitting Judge referred the case to a competent Court, for reversal of the Zilla Court's Decree,

The Court concurred in opinion with the Chief, late the second, Judge, and passed a Decree reversing that of the Zilla Judge, thereby nonsuiting Respondent in his original suit, and awarding him to bear all costs in both Courts.

Competent Court, J. Sutherland, *2d Judge.* E. Ironside, *3d Judge.* Decree 16th March 1822.

N°. 37.

UMROOTRAM BYRAGEE,.....APPELLANT,

VERSUS

NARAYUNDAS RUSEEKDAS,.....RESPONDENT.

APPELLANT originally sued in the Broach Court on the 11th May 1821, to oblige Respondent, as Nephew and Heir of Mt. Muha Lukmee deceased, Relict of Juggoo Bhaee Krishundas, to pay Rupees 1,022, principal and Interest of a Note for Rupees 701, passed to Appellant by Muha Lukmee on the 5th Chytur Sood A. S. 1872, or 3d April 1816. Appellant said Respondent had succeeded to an Income of Rupees 500 per annum from a Muzmooadaree Office, and to three houses at Broach, and was well able to pay this sum.

Broach Udalut, T. Barnard, *Judge.*

In a case where the Heirs of a person deceased refused payment of a Bond contracted by his

Respondent

widow, (also dead) and in which it was proved that part of the amount was expended by the widow in payment of her husband's debts, it was held, that the Heirs were liable by the Hindoo Law for so much of the amount as had been so laid out, but that the widow could not Saddle the Estate, or Heirs, with any unnecessary burthens.

Respondent answered that he knew nothing about the claim, but it was evidently false, since Muha Lukmee enjoyed a yearly Revenue of Rupees 500, by Appellant's admission, and it was not likely that a Childless Widow could spend all this and incur a debt besides, and no writing of her's would be binding upon him and his Brother, the Coheir to Muha Lukmee's Estate, unless given with their knowledge and consent. But Appellant was a friend of Muha Lukmee, and she had, from enmity to them, or some other cause, falsely saddled the Estate with this debt, and had given every thing she got to this Appellant. He explained that they were only Nephews of Muha Lukshumee, through her husband Juggoo Bhaee, from whom the Muzmooadaree Office and the Houses descended to them, and they were his Heirs rather than Muha Lukshumee's.

Appellant replied, that Muha Lukshumee, as succeeding to her husband's Muzmooadaree Office on his death, was by the Rules of Muzmooadaree Offices, perfect Mistress of the Revenue derivable from the Office left by her husband, and at liberty to borrow, lend, or do what she pleased, with the Revenues of her Estate, without Control; and a debt contracted by her for the benefit of the Estate was valid and binding on the Heirs.

Respondents again pleaded that they, as Heirs, were not bound for the Widow's debts. They said that the late Judge, Mr. Romer, in settling the affairs of the family formerly, fixed Rupees 400 per annum, as a sufficient salary for the Widows of the late Lulloo Bhaee's Son, also deceased, with an injunction that the Heirs should not be answerable for any debts they should contract, after spending that sum, and it was very singular that Muha Lukmee should have been unable to maintain herself alone, upon a salary one fifth greater, without contracting debt. But above all, they declared they had as yet received nothing whatever of Muha Lukmee's Estate, in proof of which they referred the Court to a Suit they had then pending against her brother for one of the houses (in which she had allowed him

to

to live, and which he refused to surrender), and said the yearly Revenue had not yet been realized.

The Court called on the Shastrees to say, in the case of a Widow, who, inheriting from her husband's Estates yielding an Income of Rupees 500 per annum, and being without children, should, from a wish to injure her husband's Nephews the Heirs to these Estates, spend all the Income, and incur Bond debts besides, whether the Creditors of the Widow for those debts could recover the amount of them from the Nephews, after the Widow's death, or not?

The Shastrees answered that Debts incurred under such circumstances were not binding on the Nephews, as Heirs, (1) but the Nephews would be bound to pay all debts incurred from absolute necessity, whether contracted with their knowledge or not, for in the words of Jimootuvahunu, in the Dayu Bhagu " to the Widow (devolves) the Estate of her husband." (2)

The Note on which Appellant sued was given for " a loan" of Rupees 701, and specified 9 per Cent per annum, as the rate of interest to be charged upon it.

The three subscribing witnesses proved its execution by Muha Lukshumee in their presence, but one only of them spoke to delivery of the money; another said he understood the debt was incurred for domestic expenses. He was examined by Respondent

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(1) Mit. Book second, leaf 19th, page 2nd, line 13th, " Debts unusual," (or unsanctioned by custom) " are not binding on the Sons; so it is recorded by Oosuna."

(2) For which she thereby becomes entitled to contract debts for necessaries, and they are binding on the Heirs as declared in the 5th and three next lines of the same page of the Mit. Yagnyuwulkyu "A Woman shall not pay debts incurred by her husband or son; neither a " father those of his son, nor a husband those of his wife unless contracted on account of " the family." The Commentator, repeating a married woman shall not pay debts contracted by her husband neither a mother those of her son. Also, a father need not pay the debts of his son, nor a husband those of his wife says " here must be understood, as apply- " ing to all, *unless incurred on account of the family.* Wherefore also Debts contracted by " any one for the sake of the family, must be paid by the head of that family. If there be " none, then they must be paid by those who take the Estate."

pondent as to their amount, but the Court considered it of no use, since he, Respondent, ought himself to shew that Muha Lukmee was properly provided for, by the holders of the Estate. This he was called on to do, and Appellant to prove the existence of circumstances authorizing Muha Lukmee to assume such unusual expenses.

Two witnesses shewed by their Books that Muha Lukmee had dealings with them, borrowing money and repaying it to them, and that Respondent's Brother acted for her on one occasion. The Shastree stated that Muha Lukmee was heir to her husband in her own person, because Respondent lived separate from her, but that it did not entitle her to alienate any real property.

Respondent admitted that Muha Lukmee, after her husband's death, paid off his debts to the amount of about Rupees 1,500. One Bhookundas proved by his Books, that Muha Lukmee paid off a debt of her husband to him, the greatest part, Rupees 335-0-14 by assignments out of the Muzmooadaree Revenues. A Goomashta of the house of Prubhoodas proved a payment of Rupees 111 from the same source by Muha Lukmee, and another sum of Rupees 67-0-0 in Cash, for a debt of her husband. Another person named Kishundas shewed that the husband owed him 9½ Rupees at his death. That Girdhur, his Brother, afterwards borrowed Rupees 53 more, and that the whole debt, amounting to Rupees 100 in A. S. 1851, was that year paid off out of the Muzmooadaree Fees.

The Court saw nothing in this evidence to invest Muha Lukmee with a right to place any incumbrance on the Family Estate. She received the Muzmooadaree Fees for her support, and the Estate, consisting of those Fees, was to devolve to the Heir in the same state as her husband left it. He (the husband) certainly had power to saddle the Estate with incumbrances; therefore, whatever debts *of his* had been paid off by Muha Lukmee, were fairly chargeable to the Estate, as a Debt personally

personally due to her by the Estate, and the Heir, who received it, was bound to her personal Creditors for the amount.

Respondent hearing this opinion, requested permission to adduce evidence of Sums received by Muha Lukmee, that they might be an offsett against those paid by her.

Time was given him for the purpose, but he, after the lapse of some days, declared his inability to prove more than Rupees 377, which were received by her from Bhookundas, as appeared also in his Books before the Court. It was said that it was expended on the funeral of her husband, and the Items of payment corroborated the assertion. The Court therefore held that Respondent was liable for a moderate charge on this account, since he could not shew that he himself had expended any thing.

It was therefore decreed that Respondent should pay to Appellant, the sum of Rupees 337-1-00 the balance still due of Muha Lukmee's Debt with Bhookundas on account of her husband; Rupees 111 paid by her on the same account to Prubhoodas; and Rupees 9-2-00 and its interest, being the debt actually due by her husband to Kishundas at his death and paid off (with the accumulated amount) by Muha Lukmee, being Rupees 361-3-00 and Costs Rupees 62-2-25, total Rupees 424-1-35.

Decree 11th August 1821.

This Appeal was at one time struck off the File for Appellant's default, but again restored to its place, on his representing it to have occurred in consequence of his expecting notice to be served upon him by a Peon, eight days previous to the first reading, as was the practise of the late Court of Appeal, and that his Wukeel, in consequence of this mistake, was not in attendance when it was called on.

Sudur Udalut,
Sitting Judge.
J. Romer,
Chief Judge.

When the Appeal came on, the Sitting Judge observed, that the question to be determined, was whether the deceased Muha Lukmee, in borrowing from Appellant under the Note on which he sued, had contracted such a debt as the property which had passed to Respondent, the Nephew and Heir of her husband, could

could be made responsible for. The Law of the Shastr on the point, provided for the payment of it out of the inherited property, but then it must have been incurred on one of the following accounts ; Charity in honor of the deceased husband, provision of necessaries or subsistence ; maintenance of any trade or business left by the husband to his Widow's management, or engaged in by her ; and Charity on her own account. On the present occasion it did not appear, and Appellant was unable to prove, that Muha Lukmee took up the money from him for any of those purposes which the Shastr considered valid to render property liable for a Widow's debts, even if not specially assigned by her in mortgage for the purposes.

Appellant urged that Muha Lukmee had laid out some money in the purchase of a house, and which he prayed might be made answerable for this debt.

The Sitting Judge found, by a verbal reference to the Law Officer, that claims of the Widow's Creditors upon property acquired as that house had been, were governed by the same provision as those upon other property coming direct from the Husband, viz. by the cause of the debt being good and valid, or by the property being made answerable for it, by Assignment of sale or mortgage. For it appeared, that if either of these were completed by the Widow, although it might not be proved that she observed all the Rules of Law on the transaction, yet the rights of the Purchaser or Mortgagee, on this alienated property would be considered superior to those of the Heir. The Sitting Judge however, under all the circumstances of the case, resolved to affirm the Zilla Judge's Decree, with Costs against Appellant.

Decree 29th April 1822.

N°. 38.

DAMODHUR BINDRABIN and MT. LUKMEE, his wife..... } *APPELLANTS,*

VERSUS

MOOLCHUND GOVURDHUN..... ..... *RESPONDENT.*

Ahmudabad Udalut, D. Greenhill, *Register,*

Claim against the Head Partner of a Firm, for recovery of the amount of a Bond in the names of the Firm itself.

Zilla Court under the circumstances gave a Decree against the Firm, which the Sudur Udalut affirmed, remarking that the Suit as against the Head Partner alone should have been struck off.

THIS Suit was originally filed by Appellants in the Zilla Court, on the 3rd May 1819 to recover the amount of a Bond from Respondent, as Heir of Keshoor Bindrabin, his Great Grandfather. The plea of his being Heir was founded on his being Head of the house of business set up by Keshoor; and the claim of debt, on his having executed a Bond in Keshoor's name to Appellants on the 10th Magh Sood A. S. 1874 or 15th February 1818, for Rupees 517, and on which the interest had accumulated to Rupees 33 3-88 total amount sued for, Rupees 551.

Respondent said that the claim did not lie against himself alone, but against all the members of the Firm, which carried on Agency business, and as usual, kept up the name of their founder. But it did not follow that all Keshoor Bindrabin's property remained with him. Appellant Lukmee's mother was Respondent's Father's Aunt; she had got the property, and Appellants might sue her for what they considered due. Keshoor Bindrabin had three sons, Duyal Bhaee, father of Lukmee; Gopaljee the Grandfather of Respondent; and Prubhoojee who died without issue. Lukmee's mother had succeeded her husband Duyal Bhaee, as his Heir, inheriting thereby the greatest share of the Estate, which the three Brothers had divided. The whole share of Prubhoojee was expended on his funeral, and payment of his debts, and all Respondent's father's share had likewise been expended for his Father in the same way. It followed therefore that Respondent's Mother had got all the property, and himself none, and her claim, if just, lay against

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the Estate of Keshoor alone, besides that Duyal Bhaee's Widow had also adopted Appellant's son as her own, and the property might be said to be in Appellant's own hands.

Appellants replied that the note was written by Respondent with his own hands to them for the value of Pulla Jewels, which his own Father had got hold of from a third person with whom they had been deposited, and further, that Respondent was acknowledged Head of the House, and therefore liable to be sued.

The Court then recorded the note, which was not denied by Respondent, and a Warus Nama, or Deed of inheritance, whereby Motee Buhoo, Widow of Duyaldas, Son of Keshoordas Bindrabin, constituted Appellant Lukmee and her son Dulsookh, Heirs to all her property, declaring also that Dulsookh had been duly adopted by her as her Son, and as such was to perform funeral Rites.

Also a Deed of Release passed by Gopaldas and Prubhoodas to their Brother Duyal Bhaee, acknowledging to have received a House from him as part of their share of the inheritance.

The Court finding the debt just, and considering the circumstances of the case, decreed that Appellants should recover its amount, with Costs, from the property of Keshoor Bindrabin.

Decree 15th August 1821.

Sudur Udalut, *Sitting Judge.* J. Sutherland, *2d Judge.*

The Court remarked that as the note was in the name of the Firm of Keshoor Bindrabin, which was not bankrupt, and still in existence, the action should have been entered in the name of it, and not in that of Respondent. As the Register had given a Decree against it, exonerating Respondent, that Decree was allowed to stand, but the Court at the same time recorded, that the case ought to have been thrown out in the lower Court, leaving Appellants to their fresh action against the Firm.

Decree 11th March 1822.

No. 39.

No. 39.

MIHIRWANJEE NUOSHIRWANJEE,.....*Appellant*,

versus

AWAN BAEE, his Wife,.....*Respondent*.

Surat Udalut, J. Kentish, *Acting Judge*.

Nos. $\frac{1127}{347}$ of 1820.

Claim by Respondent, a Parsee woman to obtain either a Divorce from her husband or an Injunction to him to put away his second wife.

Counter claim by the husband, to obtain Security from his wife for her Dower Jewels.

Held by the Sudur Udalut, that Appellant had no right to demand Security for his wife's Dower, and must repudiate the second wife.

On the 10th March 1820, Respondent filed the suit No. 1127, against Appellant, stating that he, at the suggestions of his mother, had neglected her, and refused to take her into his Family, without any fault on her part. When Respondent discovered what was going on, she complained to the Modee, who sent for the Appellant's Father to enquire into the case. He had denied all knowledge of, or participation in, this injustice, and voluntarily gave a Penalty Bond, binding himself not to allow his son, Appellant, to contract a marriage with any other woman, but had since been persuaded to join the other party and preferred a complaint against the Modee. Appellant since that had attempted to introduce another Woman, as his wife, into the house in preference to Respondent.

The Court having advised her to sue for damages, she now came forward, praying the assistance of the Court to establish her in her full rights and privileges in Appellant's house, and for an injunction against his contracting a second marriage. The damages were laid at Rupees 1600, from Respondent's inability to furnish stamped paper of a higher value. Respondent, in a separate motion, filed before recording the Pleadings, prayed for an injunction to Appellant, against celebrating his second marriage until decision had been passed upon her claim for conjugal Rights.

Appellant answered, that the Custom of husbands taking second wives was a very ancient one, and Respondent could have no reason for complaint, adding that she went astray and had a design upon his life, which obliged him to wander about from place to place. He then spoke of the Modee as his

his enemy, and a person who conducted the points referred to him by a system of partiality, and that in this very matter of taking two Wives, he had permitted it to some, and obliged others to put them away again. Appellant was ready to furnish examples of persons who had taken second wives, putting away the first on a maintenance.

Respondent retorted that Appellant had set the Unjoomun or meeting of their sect, at defiance, and minded neither their Rules nor the Laws of God, walking in sin, and committing every possible crime. She challenged him to prove his charges against her, and flatly denied the existence of any Custom or Rule permitting a man to take a second wife, except in cases of blindness, lameness, or other defect in the first wife, when the Modee should be applied to for leave, and would grant it, if he saw good and sufficient cause, with consent of the first wife, but not without.

The suit No. 1347, was filed on the 21st of the same month by Appellant against his wife, complaining that she went astray and behaved so ill that it was impossible for him to live with her. He was half dead with her evil deeds, and she now wished to kill him outright. He was ready to give her a maintenance, but she had filed the above false complaint against him, and he was afraid she would squander away her Pulla Jewels and Clothes, value Rupees 1,361, wherefore he prayed the Court to oblige her to furnish Security for the safe keeping of that property

Respondent pleaded the Custom of the Sect did not warrant her being called on for Security on account of Jewels and Clothes. But setting aside this, she had only a few of her ornaments, and some old clothes, and was in debt between 300 and 400 Rupees for food and necessaries.

Appellant exhibited a List of the Clothes and ornaments said to be in Respondent's possession, and, as Defendant in the other Suit, gave in two marriage Chits.

" Dosa Bhaee Kaoosjee Modee certifies, that the marriage " of Parsee Munchurjee Bahumunjee, Meethoojee, of the " Suyud Poora and the Muhella or Division of Andharoe Sahib, " was this day celebrated with the daughter of Shapoorjee " Kaoosjee, Kat Peetoya" (one who buys and breaks up Houses for the materials) " of the same Division of that Poora. " Dated Sunday 5th Asvin Vud A. S. 1864, or 3rd day of " the 1st Month.

(Signed) "MODEE KHOORSHEDJEE DOSA BHAEE."

The second was signed by and in the name of the same Modee, as a certificate of the marriage of " Parsee Mihirwanjee " Nowrozjee of the Government service, living in Dhunjee " Shah's Division, with the daughter of Shuhreear Khurroo, " Sawyer" (Kuraee) " in the Chair-Rattanner's Division, op- " posite the Modee's, on Sunday 4th Margsirsh Vud A. S. " 1814, or 11th of the 3d Month."

The witnesses in both Suits were called by Appellant. The first, Hormuzjee Kala Bhaee, knew no more than that he went one day to call upon Appellant, and was told he had gone to the Modee where he went, but only saw Appellant's Mother-in-Law, who was employed with the Modee about some Jewels, and he was told to tell Appellant they wanted him about these Jewels. Jeevunjee Munoochur saw the Jewels deposited by the Mother-in-law with the Modee, and saw the former witness there at the same time.

Khoorshedjee Dosa Bhaee Modee, Davur, or Ruler of the Sect of Parsees, deposed, that a man of their Body may marry a second wife, his first being still alive, only in case of the first wife having attained the age of forty without bearing a child, when he may, with permission first asked of the Unjoomun, and consent of the first Wife, take another, his doing so being in that case warranted by their Rules, which on the contrary would oblige him to repudiate the second, if the requisite permission had not been obtained. Witness said when

Respondent

Respondent complained to him against Appellant her husband, he called for Appellant's Father, who promised faithfully not to allow his son to enter into a second marriage, but having broken this promise, he again called him up, and found that he had since been contracting for the daughter of Dada Andharoo. That person flatly denied that he had promised his daughter, and after much discussion, Appellant's Father gave in the Penalty Bond, which had been deposited in the Court. Witness added that no person whatever has any claim to the Dower Jewels &c. of a Wife, who is sole Mistress of them. He, Witness, gave the following explanations in reply to sixteen Instances of second marriages quoted by Appellant; " That of Goojajee happened in his Fa-
" ther's time, but he knew the husband had received a severe
" punishment for the Offence. Another case, which came be-
" fore the Udalut, that of Eruj Shah, was about to be referred
" to the Modee, but the husband objecting, the Court settled
" the matter, and witness believed the separation of that husband
" from his Wife was owing to the Wife's refusal still to cohabit.
" A third, Sorabjee Khoorshedjee, had taken another Wife,
" but as the first wife had not complained, witness knew nothing
" about the case. A fourth, Jumshedjee, married, as his second
" Wife, the witness's daughter, but then his first wife was bar-
" ren. The fifth example was that of Roostumjee, witness's
" family Priest, or Andharoo, who married a second Wife be-
" cause his first was in bad health, and he believed deranged.
" The sixth person named he knew nothing about. Manik
" Shah, the Seventh, the maternal Grandfather of witness,
" married again, because his first Wife was mad, but he ad-
" mitted that she bore her husband two sons and a daughter
" before she became ill, and lived in the same house with her
" husband till his death. The Eighth, Dada Bhaee, (whom Ap-
" pellant named as a Domestic of witness, but which the latter
" denied) married again because his first Wife was barren.
" Suhoorabjee Nuoshirwanjee, the Ninth, was permitted to
" marry

" marry again notwithstanding his first Wife brought him a " daughter, because their religion absolutely required that a " man should have a Son. The tenth, Kaoosjee, in the Col- " lector's service, witness did not know. Roostumjee Joshee, " eleventh, was punished by the Unjoomun for improperly con- " tracting a second marriage. Heerjee Paruk and Buhramjee, " witness admitted had married again, he could not say why, " but supposed because their first wives were above the age " he had mentioned. Another case he admitted, but said the " wife had preferred no complaint to him. The person named " as fifteenth he had never heard of, and the sixteenth example " was that of a man whose first wife was charged with adultery, " and he was in consequence permitted to take another." Appellant then recalled to witness's recollection, the case of Kaoosjee Ruttunjee, whose wife complained against him to the Court for possession of her Jewels and a maintenance, which case having been referred to the Unjoomun, they had awarded to her a maintenance. Witness admitted this, as well as that he had signed the award. Witness said his sanction was not required by the Andharoo, to celebrate marriages, but he always interfered whenever any improper proceeding was reported to him. No Woman who had received a Divorce from her first husband, was ever permitted to marry again, unless indeed the husband apostatized, or became incurably diseased, or deranged, in which case the Unjoomun would grant her permission to marry again. Three examples quoted of wives marrying again were denied by witness to be known to him. He concluded by saying, that the claims of the first wife over her husband on these points was absolute, and that a person acting as Appellant had done ought to be punished, for breaking through the Rules of their Sect.

The Court found that Appellant had, contrary to the Laws and usages of the community of which he professed himself a member, contracted a second marriage to the prejudice of Respondent, his legal wife, and had shewn no good or sufficient

cause,

cause, originating either from disease, imbecility of mind, adultery, or incapacity from age, to warrant and justify the proceedure. Wherefore he was enjoined to receive Respondent into his family, to afford her his protection, and to reinstate her in all conjugal rights and privileges. And at the same time his claim against her for the purpose of compelling her to enter into security for the amount value of Dower in her possession, was dismissed, on the grounds of the property in question belonging to Respondent of right, and not being in its nature subject to the control of her husband, and because the claim was foreign to general practise and usage, and wholly unsupported by precedent, Custom, or Rule of Cast. The Appellant was adjudged to bear all Costs.

Decree 21st July 1821.

Sudur Udalut, *Sitting Judge*- J. Romer, *2d Judge.*

The objections taken by Appellant to this decision were, that Respondent, in pressing her Right of living with Appellant so strongly, had a design upon his life, and would murder him on the first opportunity, and therefore he prayed for reversal of the Decree, to enable him to provide for his safety by keeping her apart from himself.

Respondent in answer informed the Court that Appellant had actually celebrated his marriage with the other woman, notwithstanding her motion to the lower Court for preventing it, and she expressed her own dissatisfaction with the Zilla Court's Decree, because it had not obliged Appellant to turn the other woman out of the house.

The Sitting Judge observed, that in consequence of the Zilla Court not having issued the injunction prayed for by the Respondent, pending the Suit, the second marriage had been celebrated "sub silentio" and without consent of Respondent, but not in contravention of any order of the Zilla Court. The question of the right of a Parsee to contract a second marriage, and the circumstances under which such marriages were esteemed admissible and regular, had been considered by the Court of Appeal in the Case No. 554, that of Kaoosjee Roostumjee versus

Mt.

Mt. Awan Baee. In the Proceedings of that Court under date 16th December 1817, in that Suit, the following observation was recorded. "In general it seems to result that second marriages are not strictly allowable without sufficient cause, but "that such a second marriage, when made, cannot be dissolved," and the evidence of the Modee taken in the present cause established the same point. The Court entirely concurred with the finding of the Acting Judge, and would at once have affirmed his Decree, but Respondent having urged that Justice required her rights to be maintained, by obliging the second Wife to live apart and not to be an inmate of her husband's house, which provision was made by the rule and usage of the Unjoomun or Punchayut on such unlawful second marriages occurring, the Court, in order to ascertain this point, drew up a Question to the Modee, Dustoor, and Chief persons of the Parsee Unjoomun in Surat, and transmitted it to them for answer, postponing the Suit in the mean time pending receipt of their answer. Appellant presented two motions to a full Court which referred them to the Sitting Judge, before whom the case lay. The object of the first was to withdraw the Appeal, on the ground that the Question to the Parsee Unjoomun had been put at the instance of Respondent and that the Modee was Appellant's Enemy.

The Sitting Judge observed, it might certainly be allowed that so far as his own right was concerned, Appellant was at any time at liberty to retire from the suit, but in the matter under consideration the right of Respondent was in question, and he could see no good grounds for depriving her of the opportunity the Court had given her, of having all the merits of the points at issue between her husband before it. Were the suit to stop here, Respondent in justice must be allowed to bring an Appeal to try the remaining question, which was now within the reach of the Court; but this would only be a vexatious and harassing prolongation of the Suit for no good purpose; the motion to withdraw the Appeal was on these grounds refused.

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The second motion was against receiving the answer of the Parsee Unjoomun, because it was disagreeable to many of the Principal Parsees, and the Modee would get others, his own Creatures, to sign it. Appellant therein reminded the Court of the Schisms of Kudeemee and Rusmee existing among the Sect, and that the Modee was not acknowledged by both parties.

The Sitting Judge having received the answer, and recorded it, Appellant objected to it as signed by many persons who did not sit in the Unjoomun. Being desired to point out their names, that it might be enquired into, he declined doing so.

The case had been thus put to them, "A woman, being neither "barren, deranged, very aged, nor an adultress, was repudia- "ted without her own consent, or the consent of the Modee, "and Unjoomun, by her husband, who has since married ano- "ther woman; but as the second marriage was not rendered "necessary by any of the abovementioned causes, you are called "on to state, whether by the Custom and Rules of your Sect, "the husband can be obliged to turn the second wife out of the "house, and maintain her in a separate house, or not?

The answer declared "that it was proper to turn such a "woman or second wife, out of her husband's house." Referring to the Moochulka given by Appellant's Father, binding himself to pay the amount of Rupees 5,000 if he ever caused, or permitted, his son's marriage with any other woman except Respondent, which Moochulka had since been broken, the certifiers observed "that Appellant's conduct was unwarranted by "the laws of God or man, and that Appellant ought to be "obliged to receive his first wife, Respondent, in his own house "and to maintain her in food, clothes, and every thing neces- "sary and proper, and to send away his second wife; and more- "over, in case, after his so turning her away, it should be dis- "covered that he still privately in any way, kept up the con- "nextion with her, that he should suffer punishment both from "Government and the Unjoomun." Appellant then said that

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it had been decided by a Decree of the late Court of Appeal, that a husband, under circumstances similar to those of the Appellant, might keep both the wives in his house. The Court observed, that this answer being signed by the Modee, Dustoor, and thirty one respectable individuals, appeared to be valid as an exposition of Cast Usage, and Law, and having been required by proper authority, must be considered as conclusive of the question, although there was reason to believe that the Parsee community were far from unanimous on the point at issue.

The Sitting Judge declared his opinion that the Decree ought to be affirmed, with the further amendment, that agreeably to the answer of the Parsee Unjoomun, Appellant should be required to put away his second wife, and keep her apart, and he referred the case to a Court competent to make such an amendment of the original judgment.

Competent Court,
J. Sutherland, *2d Judge*,
E. Ironside, *3d Judge*.

The Court in the first instance referred to the case alluded to by Appellant, that of No. 524, which was decided on the 30th June 1817. But it was found not to bear out Appellant, as that action was brought by one Motee Baee against her husband, claiming maintenance on an alleged agreement of separation, which was thrown out in both Courts as not proved. A second one was then pointed out, but it was found to be equally foreign to the Appeal under discussion. The Court observed, with regard to the Decree of the Court, that it should be fully supported as far as it went, but adverting to the enhancement of the terms of it proposed by the late second (now Chief) Judge, and the delicacy of the case, the Court declared that a necessity existed for putting an effectual check on the license, which many of the Parsees had arrogated to themselves, of repudiating their old and taking to themselves new wives, without reference to established custom. This loose principle was calculated to do much mischief in the sect, and to bring into disrepute the marriage state, which it was the bounden duty of the Court to support. The amendment proposed by the late second Judge was the best plan for attaining

taining the object, that of checking this practise, short of an actual dissolution of the second marriage, which it had been determined could not be done. After it was once contracted as a general rule, no person coming to appeal should be made worse off by that act, than he was by the terms of the original Decree against which he appealed, but from the relation in which the present parties stood to each other, the Court determined to act in the present case, as proposed by the late second Judge, contrary to what it would be, under other circumstances, generally bound to do. The decision of the Zilla Court was affirmed, the Court further adjudging that agreeable to the answer of the Parsee Unjoomuns Appellant should put away his second wife, and keep her apart. All costs were awarded against him.

Decree 16th March 1822.

The Suit No. 554 of the Provincial Court's file was that mentioned by the Modee in his deposition, of Kaoosjee Ruttunjee versus His wife Awan Baee. It was originally filed in the Surat Zilla Court by the wife on the 30th January 1816 " in " formâ pauperis" in the amount of Rupees 2,500, to obtain her Clothes and Jewels from him, and was in every respect similar to that above reported. The wife was 22 years of age, and had borne children.

J. Romer. *Judge.*

The defence was, that the wife had made away with her ornaments, and tormented the husband out of his very existence. He asserted his right of having if he so pleased, four wives, and added that his wife had no right to complain to the Modee, as that person had no control over the Sect of Parsees to whom he, the husband, belonged, over which Suhoorabjee Dustoor alone had control. The Parsees were stated by him to be divided into two Schisms, of Kudeemee or original Parsees (called also Chooreegurs,) and that of Rusmee (or Shuhursaees) to the former of whom he himself belonged, and this division existed also in Bombay.

The Modee was induced by this assertion to move the Court to dissolve the second marriage.

A Question was thereupon proposed by the Court to the Modee, Dustoor and principal persons among the Parsees, to know, whether the second marriage in this case were allowable or not?

They answered, first, that no man could take a second wife during the life time of his first one, unless some of the reasons specified in their rules, had existence; that a rule had been established forbidding the practise, but it might be allowed, if the first wife were old and barren, and gave consent to her husband marrying again, but not without.—Secondly, if a person breaking through the custom should marry a second wife, and should be complained against, he must, and would, be punished in the manner usual for that offence. Kaoosjee, the husband in the present case, being in this predicament, should be fined to any amount under Rupees 1,000 for the benefit of the Punchayut, or of the Government, by which means the Custom or Rule forbidding second marriages would be maintained. Respecting the wife's claim for her clothes and Jewels, they should be delivered up to her, and her husband be obliged, either to admit her into the house, or if they could not agree, to allow her a separate dwelling and maintenance, and Rupees 60 per month besides, and to pay her funeral expenses. This answer was signed by Khoorshedjee Modee, Darab Dustoor, and 18 other persons, and was confirmed in all its provisions by a Decree of Court, under date the 21st January 1817, which fixed the fine at Rupees 200.

The cause of Appealing was, that the Decree was passed according to the Customs of the Rusmee sect, to which the husband did not belong, and therefore was not amenable to its Rules.

The wife pleaded that the same Modee and Dustoor, to whom the Court had referred her case, had always been consulted during the seventeen years of the Company's Government, and in the Nuwab's time before that, to expound the Laws

of

of both Sects. She added that the Custom of taking second wives was not of more than 150 years standing.

The husband then exhibited a certain Book, shewing the Riwayut, or Custom. This the Court rejected in evidence because, being written in modern Persian, it was not evidence of the ancient Customs of the Parsees.

Upon the evidence adduced the Court remarked, that from the depositions of the husband's witnesses, there did not appear any such difference between the sects of Chooreegurs, and Shuhursaees, as to prevent their intermarriage or burying in the same place. They had averred that in all ceremonies of marriage, each referred to the Priest of his own sect.

The Modee was therefore asked, whether the marriage complained of was celebrated with the usual forms and ceremonies? This he could not say, as the marriage was performed in secret. The evidence on the part of the wife tended to shew that second marriages were not allowed without good cause, and even then, not without consent of the first Wife. The Wife, in order to rebut the main argument of her husband, that the Modee, being a Shuhursaee was not competent to explain the Laws and Customs of his sect, the Chooreegurs, put in several papers, which shewed, first that the Modee's opinion on all such points had been received on former occasions by the Judges of the Udalut in cases of disputes wherein the Kudmees, or Rusmees, (Chooreegurs or Shuhursaees,) were parties, either solely, or against persons of the opposite sect. Secondly, that even the sect of Chooreegurs had subscribed general addresses to Mr. Crow and Mr. Romer, constituting the Modee the Expounder of the Laws of the Parsee Cast to the Judge.

In support of this, a paper signed by the father of the complainant's husband was also exhibited, whereby that person agreed to refer a dispute to the Modee's arbitration.

The Court remarked that in these Papers there was nothing specific

specific as to second marriages, but there was another paper, dated 1st December 1806, being an agreement of both sects to entrust the Modee with a kind of superintendence over the morals and conduct of the Females of the Cast generally, which was decisive as to his eligibility to give an opinion, at least to the Customs of the Cast, in regard to the present question of second marriage. In general it seemed to result that second marriages were not strictly allowed without sufficient cause, but that such a second marriage, when made, could not be dissolved, and that it further appeared that second marriages were so very numerous among the members of the Parsee Cast, without any former precedent of the rigid enforcement of the penalties of the Law, if any such existed, that the Court did not feel warranted in enforcing the decision founded upon the opinion of the Modee, and others, given in the Udalut, respecting the fine being imposed by a Civil Court. A precedent had been adduced of a fine levied by the Magistrate for marriage without a license, but it did not appear to be a case of marriage with a second wife whilst the first was alive. The Court therefore determined to remit the fine imposed on the husband, and to affirm the Decree of the Zilla Judge on all other points, against the husband, with Costs.

Decree 16th Dec. 1817.

Note. Some correspondence occurred subsequently, between the Zilla Judge and the Courts of Appeal and Sudur Udalut, respecting the wife's being obliged to furnish security for the Jewels and other property in her possession; it is not recorded, because the point of right had been since regularly settled by the above reported case, filed expressly to try her right to demand security. The opinion of the Modee, Dustoor, &c. were decidedly against security being called for.

N°. 40.

BUHEEROJEE BHILARE.....*APPELLANT*,

VERSUS

SABAJEE BHILARE.....*RESPONDENT*.

South Konkun Udalut, W. Stubbs, *Register*.

APPELLANT on the 30th November 1819 filed his Suit against Respondent, in the Zilla Court, to recover from him possession of the Khotship of the Village of Aeenee in the Turuf Kher, and Talooka Soovurndroog, valued at Rupees 300 per annum.

Claim for the Khotship of a village, dismissed by the Zilla Court under the limitation of twelve years, but by Sudur Udalut granted on proof of the right.

Respondent denied the claim, asserting that the Khotee had belonged to his family for near 100 years, and had been in his own possession from 65 to 70 years, and that Appellant did not even belong to the family.

Appellant in reply explained that the Khotship belonged originally to a family of the name of Khyr, and their last descendant having no male issue, gave the Wuttun to one of Appellant's ancestors, named Dhondjee Soobhanjee Bhilara. This person mortgaged the Khotship to Pilajee Kherekur, a Cowkeeper of the village of Aeenee, for Rupees 75, and went abroad. Khundojee Bhilara taking advantage of his bearing the same name, laid claim to the Khotship from Kherekur the Cowkeeper, and held it a short time. Appellant's ancestor returned not long after and disputed possession with Khundojee's brother; the village was attached, then released by that person, again attached at the instance of Appellant, who in the time of Dhoomale got possession for a few months, but Respondent ejected him again, and turned his family out of the village. The same year his house was burned, and most of his Documents relating to this dispute destroyed. He had however preserved some documents, and copies of depositions taken in the Peshwa's

Peshwa's time, and prayed the Court to take the evidence of the surrounding villages as to his right to the Khotship.

Respondent still said that his family had held this Wuttun for 95 years, out of which he himself had enjoyed it for 70 years, during which time Appellant had never once got possession. The first document exhibited by Appellant was an Udnya Putr, or order from the Peshwa, dated 17th Moolurram Sittu Khumsueen Miyat wu Uluf, A. D. 1856, at Soovurndroog, being in form of a Kowl directed to the Ruyuts of the village in the name of Kondjee Bhilara, allowing him to have the village, and enjoy the Khotee for the ensuing year, in consequence of his having agreed to people it and bring it into a good state of cultivation, it being then waste and deserted. It concluded with a promise that a Kowl should be granted hereafter according to the Custom of the Country.

His next exhibits were two depositions given in the year Sullas Tissueen, A. D. 1793, at Kher by Yesswunt Rao, and Sabajee Rao bin Kassee Rao Bhilare, the first on the 20th Rumzan, and the other on the 12th Shaban. The first of these persons stated that Angria originally gave the village as a Remuneration for service, to Khundojee Khyr, who gave it in his old age to his Son-in-law Dhondjee Bhilara. He left a son named Kondjee who held it for some time.

The other deposition, or statement, would appear to have been given by Respondent at the same place, distinctly denying that the Wuttun belonged to him, and explaining that Ramajee Muhadeo, a former Soobedar, had permitted him to manage it, and admitting the story of its having belonged originally to Khyr. Respondent gave in a Statement of the assessment for the year Thide Tissueen, A. D. 1791, shewing the distribution of the Revenue for the year among the villagers. Respondent was therein named as Khot, and Yesswunt Rao Bhilare next to him on the List. To prove his possession after the change of Government, he gave in a Receipt dated 9th April 1820.

Three

Three witnesses, out of six summoned, appeared on the part of Appellant. The first, Dajee the son of Pilajee Kherekur the Cowkeeper, deposed that Dhondjee Bhilara's son Kondjee mortgaged the village to himself in the year of Shalivahan 1639, or A. D. 1767, for Rupees 80, and that he was dispossessed by Respondent himself. Appellant was son of this Kondjee, who returning from abroad about 20 years ago, had got the village attached, but witness could not speak to its having been in possession of Appellant's family since then.

Sunk Nak, a Mhar of the village of Dhamnee, about 60 years old, said that Dhondjee Bhilara's wife, the daughter of the original Grantee from Angria, held the village until it was mortgaged to Kherekur, the Cowkeeper, and that Respondent had held it since the time he took it from that person.

Another Mhar of Jambge spoke to the same effect.

Three witnesses were called by Respondent.

The first, the Deshpande of the district of Kher, deposed that Respondent, as long as he could recollect, had held possession of the village, without its being ever before claimed by any one. Futteh Khan Sur Gooroo of Dhamnee, and Bal Nak Mhar of the village in dispute, each declared the same.

The Court found that Respondent had held possession of the property for a period considerably above twelve years, and that Appellant had failed in adducing any proof which would entitle him, under the provisions of Section 6th Regulation 3rd of A. D. 1814, to sue for its recovery, and his claim was therefore dismissed with Costs.

Decree 16th April 1820.

The Appeal was special, and the Court, in consideration of Appellant (a Havaldar in the 6th Regiment Native Infantry) having being interrupted by his duties in the regular prosecution of his suit, allowed him now to file four other Papers, in addition to those already exhibited by him.

Sudur Udalut, Special Appeal, Sittings at Rutnagiree before S. Babington, *4th Judge.*

Three

Three of them were each receipts for one Rupee, paid by Koosajee Bhilara to the Thana of Kher for the years Summan and Tissa Tissaeen A. D. 1797 | 8, & 9, and Sullas Miyaten wu Uluf A. D. 1803.

The fourth was the mortgage Bond, by Kondjee Bhilara Khot of Aeenee, giving the Khotee of the village in mortgage to Pilajee Naik Kherekur, for Rupees 80, "money lent."

The Court conceived that the Udnya Putr sufficiently established that a grant of the Khotship of the village of Aeenee Turuf Kher Talpoka Soovurndroog, was made to Appellant's ancestor Kondjee Bhilara, by the Peshwa, 66 years ago, and although it was stated therein that a Kowl would thereafter be granted, yet that Udnya Putr, it was conceived, was effectual until such Kowl should be granted. It further appeared from the mortgage Bond, that Kondjee Bhilara had possession of the Khotship 54 years ago, so far as to be able to mortgage it, and Dajee, son of Pilajee Naik Kherekur, the mortgagee, had stated that Respondent subsequently dispossessed him whilst Kondjee Bhilara was absent. These facts were sufficient, in the Court's opinion, to support an action under the provisions of Regulation 3 of A. D. 1814, whilst Respondent had not rebutted the plea of an unjust acquisition, by any document in support of his own title, or by satisfactory evidence to prove uninterrupted possession for more than 60 years.

The Court therefore, reversed the Decree of the Zilla Court, and decreed the Khotship of the village of Aeenee, to Appellant, with all his Costs from Respondent.

Decree 27th April 1822.

No. 41.

N°. 41.

TRIMBUK RAO BHIKAJEE BURVE.....APPELLANT,

VERSUS

KRISHNAJEE Son of JUNARDHUN DHOONDERAJ DANDEKUR,..... } RESPONDENT.

Northern Konkun Udalut, W. A. Jones, *Acting Judge.*

APPELLANT filed a claim against Respondent's Father, Junardhun Dhoonderaj, on the 29th March 1820, for Rupees 1000, as balance of an account Current from the 1st Kartik Sood A. S. 1871, till 12th Chytur Sood A. S. 1876, or, November 1814 to November 1819.

Claim by Appellant, a Moamlutdar or Farmer of the Revenues under the Peshwa's Government, against an under Moamlutdar for a balance due by Respondent for his Farm; disallowed under the construction of the 9th Article of the Treaty of Poona.

Respondent said the transaction was between Appellant's Father Bhikajee Keshow Burve, and his own Father, the latter having taken the Moamlut of the Khotship of three Villages named Koombhowlee, Yekluhre, and Nudora, in the Tarapoor Mulal, from Bhikajee Keshow Rao, who was the Peshwa's Moamlutdar, or Farmer. Appellant had brought up the balance of old years since A. S. 1713 against him, but the orders of Government strictly prohibited recovery of all old balances of Moamlut dues, on which account the sums now sued for from him were still outstanding against the villages unrecovered by him in consequence of these orders, and it was unjust to expect that he should pay up balances for the villages, from which he himself was not allowed to recover them.

Among other papers exhibited, the following Extract from the Treaty of Poona, under date 13th June 1817, was recorded.

" ART. IX.—His Highness Rao Pundit Prudhan Bahadoor " will immediately issue the necessary Purwanas or orders to ' his Highness's Officers, to deliver over charge of the districts, ' ceded by Article Seventh, to the Officers of the Honorable ' Company; and it is hereby agreed and stipulated that all col- ' lections made by his Highness's Officers subsequently to the

" commencement

" commencement of the Hindoo year (answering to the 5th " June 1817 A. D.) shall be carried to the credit of the Hono- " rable Company, and all claims to balances from the said dis- " tricts referring to periods antecedent to the conclusion of this " Treaty, shall be considered as null and void."

The Court, without entering further into the merits of the case, decided that under the above Article of the Treaty, it was not at liberty to decree recovery of any outstanding balance of Revenue on account of villages, of a date earlier than that of the Treaty, and the suit was dismissed, Appellant bearing Costs.

Decre 30th June 1821.

The Sitting Judge did not concur in this judgment, by which the compact between the two States with regard to their respective claims was construed as operative upon the concerns and rights of individuals. The balances to which the Peshwa renounced his right of claim, were those of the State. Appellant was a Moamlutdar, or Farmer of the Revenue, under the Peshwa's Government, with whom it was to be presumed he had accounted, and his claim was now brought against an under renter of his own, with whom the State of Poona had no concern. The Article of the Treaty had nothing to do with the rights of individuals concerned as Farmers, Bankers, or in any other manner, with the collection of the Revenues under the late Government of Poona, and on these grounds he was of opinion that an Interlocutory Decree ought to be passed, reversing the Judgment of the lower Court, and requiring it to go into the merits of the suit and pass decision thereon.

Sudur Udalut,
Sitting Judge.
J Romer,
Chief Judge.

1st April 1822.

The Court agreeing in this opinion passed an Interlocutory decree to the effect of it, quashing all proceedings already held, and requiring the Judge to investigate its merits " de novo."

Competent Court,
J. Sutherland,
2d Judge,
E. Ironside,
3d Judge.
Interlocutory Decree 23d May 1822.

Several documents were filed on each side, and Respondent exhibited among the rest the following copy of a letter from the Secretary to Government in the Revenue Department to the late Zilla Judge.

Suit resumed before,
E. H. Baillie,
Judge.

To

To

S. BABINGTON Esquire,

Judge in the Northern Konkan,
TANNAH.

Sir,

I am directed by the Right Honorable the Governor in Council to acknowledge the receipt of your letter dated the 27th August last, and to inform you that the stipulation of the 9th Article of the Treaty of Poona was intended to apply to all Balances of Revenue, whether due to Government direct, or to Farmers. A strong stand was made to preserve the right of the Farmers to receive the amount of the Revenue for which they had made advances, but the demand was peremptorily rejected. You will accordingly regulate your decisions on the Suits that may be instituted by the Farmers for the recovery of the balances due to them by the cultivators antecedent to the conclusion of the Treaty.

I have the honor to be &c.

(Signed) W. NEWNHAM,
Secretary to Government.

BOMBAY CASTLE
22d October 1819.

Evidence was also taken, but the Judge decided, that under the above order of the Honorable the Governor in Council, transmitted to that Court for its guidance in claims similar to the one now under discussion, Appellant was not entitled to recover the amount sued for, and his case was again dismissed with Costs of Suit.

Decree 7th Sept. 1822.

Sudur Udalut, Suit resumed J. Romer, *Chief Judge.* E. Ir. nside, *3d Judge.* Referred 11th Dec. 1822.

The Sudur Udalut held that as the Interlocutory Decree required the Zilla Judge to go into the merits of the Suits between the parties, it was not competent for him to avoid the exigence of this part of the order, by only finding Appellant not entitled to recover from Respondent the amount sued for, in consequence of his construction of the orders of Governmemt. This finding contained

contained a point of Regulation, or Law which the Superior Court would consider and finally determine; it had been properly given, and received by him, in evidence, but he ought not to have stopped there. The Zilla Judge was therefore directed to complete his Proceedings by passing a decision as to what sum, if any, on the account between the parties, Appellant had proved to be due to him.

Zilla Court, E. H. Baillie *Judge*

On going through the case, the Court found that the only point on which there was any disagreement between the parties, was one Item of Rupees 777-3-00 for Bhat, debited to Respondent under date 5th Chytur Vud A. S. 1869, or 22d April 1813. It appeared regularly entered in Appellant's account Books, but to remove any doubt, he delivered in an account for A. S. 1869, signed by Respondent's Father, on the first Kartik Sood A. S. 1870, in which that very Item with several others, was admitted to be due. In a paper filed by Appellant, the balance of A. S. 1870, was brought down, and signed and admitted by Respondent's Father on the 1st Kartik Sood A. S. 1871, and his signature to this was proved. By Appellant's Books and documents, therefore, there appeared to be due to Appellant, on the 1st Kartik Sood A. S. 1871, the sum of Rupees 1261-3-00 Principal, and this, with interest to make it up to Rupees 1,600, the sum sued for, was decreed to him from the Estate of the late Respondent Junardhun Dhoonderaj, with all Costs of Suit.

Decree 31 March 1823.

Sudur Udalut, *Sitting Judge*, J. Romer, *Chief Judge*.

The Sitting Judge, remarking that Appellant had made good his claim to the amount sued for, and that the Zilla Judge's Decree ordered the payment of it with full Costs, then observed, The question now comes to be considered, whether, under the interpretation of the Treaty of Poona given in the letter from Government dated 22d October 1819, the Appellant could recover the debt he had proved to be due to him. The operation of the Treaty of Poona, as explained in this letter from Government, was intended, although not very clearly expressed, to protect

tect the cultivators from Suits on the part of the Moamlutdars, or Farmers. Justice therefore required, that if the under Farmer were restrained from recovering his Balances from the cultivator, the Head Farmer in like manner should not have the power to compel the payment of an old balance due by the under Farmer. This construction of the Treaty was not in the contemplation of the Court when the Suit was first heard, but having now been duly pleaded and put upon Record, the Sitting Judge thought it must be admitted as the Law which governed the case, and therefore referred the case to a competent Court, with his opinion that each party should pay their own Costs.

Competent Court, J. Sutherland, *2d Judge.* E. Ironside, *3d Judge.* Decree 31st May 1822.

The Court concurring in the view of the Chief Judge, set aside the interlocutory Decree, and affirmed the first decision of the Zillah Court, dated 30th June 1821, each party to bear their own Costs.

N°. 42.

KASEEDAS RUSEEKDAS.....*APPELLANT,*

VERSUS

KEEKA LAL BHAEE.....*RESPONDENT.*

Surat Udalut, Edward Grant, *Register to the Sudur Udalut,*

A person introducing another to a merchant, as the purchaser of Goods, and signing the Inventory himself, held liable to the merchant for the value of the Goods, on the purchaser absconding without payment.

ON the 17th December 1819, Respondent filed his complaint against Appellant, in the amount of Rupees 708-1-00 value of certain cloths entrusted to him. The Respondent said that about 25 days before, Appellant came to his house, and asked him to bring a lot of Cloths to his, Appellant's, house, to shew to a Merchant who had just come to purchase goods with ready Cash.

Respondent was tempted by the hopes of receiving ready money for his Goods, to accompany Appellant to the house of one Suttooram in the Nagur Phulleea, where he found Appellant with Jugjeevun Suttooram, and Suttooram in person,

and

and Duyaram Bunarsee, and another man, a Marwarree Brahmun, whom Respondent did not know. These persons got the goods valued and inventoried by a Broker named Kulyan Kuhandas, and put them by in deposit, Appellant pretending that they would look at them again on the morrow, and give him the price fixed on. Respondent was not very willing to agree to this, but when Appellant declared himself responsible he acquiesced, and Appellant giving him the List or Inventory locked the Goods in a Box, and kept the Key. When Respondent went to look after his goods in the morning, Appellant said he was very sorry, but the Marwarree Brahmun had run away with the goods. Respondent then told Appellant that as he had confessed himself responsible, and given a List under his own signature, he should look to him for repayment. He had however never seen any of the money, and now sued Appellant, and the Broker, for recovery of the value of his goods taken and made away with by them.

Appellant answered by denying all concern whatever in the transaction, but alluded to Respondent's having given to Dhoolubh Shumbhoo and Nursioon Suttooram Rupees 175 to find and produce the Merchant, and as they failed, he got back Rupees 100 at the time, and Rupees 75 by a Decree of the Sudur Umeen's Court, and Appellant urged thereupon that Respondent should at the same time have made any claim he had against him.

The other Defendant, Kulyan Kuhandas pleaded that he was in no way responsible for accidents that might happen to goods, merely from having been concerned as a Broker in valuing them.

Respondent admitted his having given to Dhoolubh the money to trace the robbery and procure restoration of his property, and the subsequent recovery of the money, as Appellant had truly stated. He then handed up the List, which was admitted by Kulyan Kuhandas, the Broker, to be in his own handwriting,

handwriting, but Appellant most positively denied the signature to be his.

It was dated 1st Margsirsh Sood A. D. 1874 or 9th December 1817 but did not bear the names of any witnesses. The circumstances of the case, as set forth by Respondent, were proved by a Goomashta of his, who accompanied him, and by a person who went to the house to sell some of his own goods, and happened to be there when the list was drawn out by the Broker, and signed by Appellant. The Goomashta proved Appellant's coming in the first instance to call his master. Also that his master gave the Cash to Dhoolubh, when Appellant was in concealment. Appellant called a witness, who stated his opinion "that the list was not drawn out in proper form as usual among "Merchants." He also produced two other persons who had sold goods to the Brahmun, one on the very day that Respondent did, and who was likewise put off from payment. The object in calling these men was to prove that neither of them took acknowledgments for the goods delivered.

He produced from the Records, Copy of Respondent's petition against Dhoolubh and Nursioon, as well as the Sudur Umeen's Proceedings, in order to shew that Respondent had never so much as alluded to him in his claim against them. The Suit was filed on the 30th November and settled 10th December 1819, in favor of Respondent against either of those persons as Defendants.

Kulyan Kuhandas exhibited a counterpart of the List which he had made out. Respondent too shewed a List of the cloths in his Stock Book, and in the account Book, in which Appellant was debited with the value of these goods.

The Court was of opinion that Respondent had proved that he gave in charge of Appellant Kaseedas the quantity of cloth mentioned in the List produced, and that Appellant Kaseedas signed the List as a Receipt for the same. It was therefore decreed

creed that he should either return the cloth, as per List, to Respondent, or pay the value thereof as sued for, he also bearing Costs.

Decree 25th August 1821.

Sudur Udalut, *Sitting Judge.* J. Sutherland, *2d Judge.*

The Court considered it essential in the first place to ascertain what steps were taken originally in the Foujdaree Department, if Respondent actually complained there, as asserted by Appellant, though denied by Respondent's Wukeel. A Precept was therefore issued to the Zilla Judge to certify the Criminal Proceedings said to have been held on the 24th December 1819. From the Extract Proceedings handed up with the Return, it appeared that Respondent, with Girdhurlal Juggunath, and Lal Bhaee Mookoonddas, came together with a complaint respecting the robbery, as a Criminal matter, but were directed by the Criminal Judge to file a Suit for the goods lost, as the matter was rather one of a Civil than of a Criminal nature.

The Sitting Judge was not fully satisfied that he ought to affirm the Decree of the lower Court, seeing that it made Appellant alone responsible, whilst it allowed the others concerned in this nefarious transaction, particularly Suttooram, the person who harbored the alleged thief, and gave protection to the property under his roof, to escape, and he took advantage of his power to refer the case to a competent Court, more particularly since the List was denied by Appellant.

Competent Court, J. Romer, *Chief Judge.* E. Ironside, *3d Judge.*

The Court considered, that this List of Articles produced by Respondent had been proved to be an authentic document, and on this ground determined to affirm the Decree passed by the Register to the Sudur Udalut in the Zilla Court, and it was affirmed accordingly, Appellant paying all Costs, with interest at 12 per Cent up to the date of this Decree.

Decree 16th May 1822.

No. 43.

No. 43.

BRIJBHOOKUNDAS VEERCHUND on the part of LUKMEECHUND VEERCHUND. } APPELLANT,

VERSUS

KUHANDAS BEHCHURDAS.....RESPONDENT.

Surat Udalut, A. Bell, *Acting Registrar.*

Nos. 1944, 2478, 2480 of 1818.

In the case of a manufacturer breaking his contract for the supply of Litharge, and the merchant acceding to it by partial receipt of the article, it was held, that the manufacturer was liable for the damages incurred through his breach of contract by the merchant; this under the award of the trade, contrary to the opinion of the Shastrees under the law of contracts.

ON the third of May 1818, Respondent filed the Suit No. 1944 against Appellant, to this effect, that he had entered into a written Contract with Appellant, in A. S. 1874, or A. D. 1817, to convert 77 maunds 17¼ seers of Lead into Litharge for Appellant, the latter passing to him a Counterpart Contract agreeing to pay at the rate of Rupees 2-1-50 per maund for Respondent's trouble and the expense of work. The work was done according to the Contract, and, of the produce, Respondent actually delivered 31 maunds 29¼ seers of Litharge, to Appellant, who however now refused to pay the *charges* upon the whole quantity contracted for, being Rupees 188-3-50 or to take in the Balance of the Litharge not already delivered. Respondent therefore sought his remedy through the Court, to obtain an order on Appellant to receive the article and pay *its Costs* as stated.

Appellant in answer admitted the transaction, but referred to the Papers passed between them for the true state of the case which he shewed to be this, that Respondent exceeded the time specified in the Contract for delivery of the Litharge, wherefore his Goomashta refused to receive it at first, but was afterwards prevailed on to take in what was then ready. The contract specified that if Respondent made the Litharge at home he should receive Rupees 2-0-50, but if by the assistance of others of the Trade, then Rupees 2-1-50. Now it was pleaded that Respondent by his breach of the conditions of the contract had forfeited all title to claim even the wages of his labor upon the goods still undelivered, or to compel Appellant to receive the quantity so remaining to be delivered, and which he, Respondent, now declined to receive, since the market Price of the article, when

agreed

agreed to be furnished, was high, but had now fallen considerably, and to take it would cause him a loss for which in fact he was thinking of suing Appellant, when the latter forestalled him by the present action.

The Contract produced by Appellant was dated 2d Posh Sood A. S. 1874, or 8th January 1818, and was written by Respondent, setting forth that he had received from Appellant Pigs of Lead to the weight of 75 maunds, to convert into Litharge, which he agreed to do at the rate of Rupees 2-0-50 per maund, or if it should be manufactured with the help of the Cast, then at the rate of Rupess 2-1-50 for melting &c. The time within which the Article was to be delivered was declared to be the 2d Phalgoon Sood or 8th March.

The counterpart contract which Appellant executed to Respondent, who produced it in Court, was dated as the above, and therein the Merchant, Appellant, agreed to pay for the Litharge, when delivered, at the same rates, and upon the same terms, and fixing the term of contract for the same date, the 2d Phalgoon Sood, or 8th March, as in the contract above.

Bunmalee Moteechund stated his knowledge of Respondent having prepared the Litharge for delivery to Appellant, before the expiration of Phalgoon Vud.

Appellant called a witness, who stated that Litharge at the time of the contract, fetched Rupees 7-3-00 and was now only worth Rupees 6-1-00. He declared that the Breach of contract by the Rules of Trade rendered the Contractor liable for the loss thereby caused.

Respondent then called one of the trade to shew that he saw about 100 maunds of Litharge in Respondent's house in Phalgoon Sood, but he could not say whether it was that contracted to be furnished to Appellant, or not.

The Court conceived it unnecessary to call for further evidence, since Respondent's witnesses had contradicted themselves, particularly

ticularly the first, whose evidence was considered false, and he was fined for prevarication. With respect to the claim, the Court conceived Respondent not entitled to the whole amount sued for, since he had broken the terms of his contract, but as Appellant had received 31 Maunds 29¼ Seers of Litharge from him, he was adjudged liable for the Wages due for Respondent's labor on that quantity, at the rate of Rupees 2-0-50 or Rupees 67-1-50, and this amount only was decreed to him, with Costs in proportion, Rupees 18, from Appellant, who was left to seek his remedy by a fresh action for the quantity undelivered, and damage sustained by losing the sale of it through Respondent's negligence.

Decree 18th August 1813.

Judge's Court in Appeal, J. Kentish, *Acting Judge.*

On the 18th September each party appealed against the decision, Appellant in the amount of Rupees 51-0-50 deduction claimed by him from the amount decreed against him. He said the Rules of the Trade required the melter, for every maund of Lead received, to return 42 seers of Litharge, and thus he should have received credit for Rupees 3-0-50 more, which with Rupees 30 damages occasioned by breach of contract, and the Costs of suit, made up the amount of the Appeal.

The Respondent was dissatisfied with the Decree, becauseit did not allow him the full amount claimed, urging that it was not customary either under the former Government or since, to attend strictly to the Term specified in Contracts, nor had damages for a Breach of one ever been recovered.

The Court referred the case, as it related to the Breach of contract, to the Shastrees. They reported, it is thus written in the Shastr. If a man employ a laborer to do a certain work and say to him, "I will give you so much," then let the amount of the wages agreed upon be divided into three parts, of which one shall be given at the commencement, the second in the middle, and the third at the completion of the work. (1) Again, in

(1) Mit. Book second, leaf 73d, page 1st, line 16th, Narudu. "Let the Master for "whom work is performed, pay wages to the servant, according to their agreement, at "the

in mutual Contracts, as when a person agrees to work for a certain number of months, if the laborer, or contractor, give up the work (before the time) he shall lose his (whole) wages, and the Prince shall fine him one hundred Puns. If the person engaging the laborer, should discharge him (before the time has expired) he shall pay him the amount of wages "*already earned*" and pay a fine of one hundred Puns to the Prince (2) Now in this case the contractor exceeded the Term agreed on, wherefore his wages should be forfeited. But his employer received the Goods, after the Contract was so broken, although he at first refused, and now claims damages, and thus has consented to keeping the terms of the Contract, though before broken; wherefore, since he has not paid the wages of labor agreed on therein, he must take back the remainder of the Goods still undelivered, and pay the wages agreed upon for the whole quantity contracted for.

The Acting Judge observed that both parties agreed as to the quantity of Litharge contracted for, and that actually delivered. The Shastrees had declared them both to have broken the terms of the Contract, and in conformity to the exposition "that Appellant should receive from Respondent the quantity "still undelivered, and pay to him the full sum agreed upon "in the Contract" it was so decreed, the Assistant Register's Decree being amended to that effect, and Appellant being ordered to bear all Costs of Suit.

Decree 4th Sept. 1821.

The Court observed, that both parties had broken the Contract, its conditions being first left unfulfilled by the Respondent, to which breach Appellant had acceded by receiving part of the Goods contracted for, after expiration of the time fixed for

Sudur Udalut, Special Appeal, *Sitting Judge.* J. Elphinston, *Chief Judge*

"the beginning, the middle, or the end of his labours, as may be settled between them." (Cole. Dig. 2d 260.)

(2) This is nearly a literal translation in Goojurathee of the saying of Vishnoo, recorded in the Chapter on payment of Wages in the Muyookhu, with the *trifling* alteration of "wages already earned" from "Wages of the whole time agreed on." (Vide Cole. Dig. 2d 271).

for their delivery, and then had receded from his part of the agreement by refusing to pay the expense of manufacture, the conditions of the Contract being that Respondent was to receive, as he in fact did, a certain quantity of lead, which he was to return after making it into Litharge at a certain price for the manufacture. Appellant still urged that the Custom of the trade bore him out in his refusal to pay the wages, and in his claim to damages from Respondent. It appeared desirable that the usage of the Trade in regard to such Contracts should be ascertained, and as this had not been done, the Court consented to a proposal of Appellant that he might be allowed to sue Respondent in the Zilla Court for a Breach of Contract. This was permitted, and the Appeal laid over till determination of that point.

The Suit which Appellant filed in the Zilla Court, was by the Register referred to arbitration, the award of which was made a Decree of Court on the 31st August 1822, (Vide annexed Report.) It was drawn up to this effect, " that this " was the first claim of the kind ever preferred. In the Con- " tract a certain term was specified, but after its expiration, the " Merchant had received the Goods contracted for, wherefore it " appeared to the Punchayut that Appellant should receive " the Goods Respondent had contracted to furnish, and should " pay the charge of manufacture. But (as Appellant had " been obliged to sue for the Goods) through Respondent's " Breach of Contract, the latter must pay Rupees 81 on " that Account to Appellant, on whose head must fall the " *Costs on the remainder.*" (3) The parties each signed this award as agreeing to it, and Appellant exhibited a Copy of the Decree founded on it to the Sudur Udalut.

That Court, on resuming the case, observed that the right of Appellant to recover damages for Breach of the Contract by Respondent

(3) " Baki no *Khurch.*" Did the Punchayut mean to allude by this to the *Cost* of Manufacture sued for, or to the Costs of Suit?

Respondent being established by this award, he was also clearly entitled to recover Rupees 51-0-50 as damages in Appeal, as well as all Costs awarded against him in his original Suit by the Assistant Register's Court. Wherefore the Decree of the Acting Zilla Judge should be amended in as far as awarding to Appellant the amount appealed for, and immediate payment to Respondent of all sums he was entitled to as charges of manufacture on the delivery of the manufactured Article, and not before.

The case was referred to a full Court for the amendment proposed.

The Sudur Udalut accordingly decreed to Appellant the sum of Rupees 51-0-50 as damages sued for in his Appeal, with full Costs on that sum in all three Courts, Rupees 27-0-44, he being also adjudged to pay to Respondent the charges of Manufacture sued for, on delivery of the Article, and not before.

Competent Court
J. Sutherland, *Second Judge.*
E. Ironside, *Third Judge*

Decree 9th January 1823.

N°. 44.

BRIJBHOOKUNDAS VEERCHUND, on the part of LUKMEECHUND VEERCHUND, ... } *APPELLANT.*

VERSUS

KUHANDAS BEHCHUR. ..... *RESPONDENT.*

APPELLANT on the 11th December 1823, filed a further Appeal for Rupees 62 being the excess of Costs adjudged against him by the Zilla Court on confirming the award of Arbitration, to the payment of which he objected, under the construction which might be put on the words, "Baki no khurch furiyadee Ape" (in or: "furiyadee no mathe ch'he,") in the award, which he held to apply only to the proportionate Costs upon the sum awarded, or the value of the Article still undelivered

Sudur Udalut, *Sitting Judge.*
J. Sutherland, *Second Judge.*

Point of Costs in an action referred to arbitra-

tion, left by the Sudur Udalut to be decided by the Arbitrators.

ed (after deducting Rupees 81 for breach of contract), being Rupees 282, and to the Costs upon the whole amount sued for. The Register, Mr. Vibart, passed a Decree in the following words, " in conformity to the said award, that Plaintiff (Appel- " lant) do receive from Defendant (Respondent) the goods given " to him to make, paying the Amount of labor, and that De- " fendant pay Plaintiff Rupees 81 for non-completion of his agree- " ment. The expense on the remaining sum to be paid by " Plaintiff." The Persian Decree ran " wu ma bukeea khurch " look mooddaee bu dukud."

The Sudur Udalut, considering the Arbitrators to be the best Judges of their own meaning, they were called up and desired to endorse on the original Award their interpretation of the point in dispute. Four out of five (the fifth having gone on a pilgrimage) appeared, and said they had intended Respondent to pay only Rupees 81 to Appellant, and fixed all the Expenses " Kool " khurch" on the head of Appellant.

Decree 13th May 1823.

The Decree of the Register's Court awarding all Costs of Suit to be borne by Appellant, was therefore affirmed against him, with further Costs in the Sudur Udalut.

N°. 45.

MIHIRWANJEE and DADABHAEE, Sons of KHOORSHEDJEE KOONWURJEE, APPELLANTS,

VERSUS

WULUBHDAS HUREEDAS..... ....RESPONDENT.

Sudur Udalut, E. Grant, *Register to the Sudur Udalut.*

RESPONDENT sued Appellants, by a Suit filed in the Zilla Court on the 18th February 1820, to recover from them the sum of Rupees 800, due on Brokerage transactions between Respondent and the Father of Appellant in A. S. 1871. Respondent said that these transations arose out of the shipping

A ship broker taking up freight (for

of

of the Honorable Company's investments of Cotton during the years A. S. 1864 and 65 or A. D. 1807-8 and 9, in procuring Freight for which Khoorshedjee Koonwurjee was employed by the Commercial Agent, and Respondent again was engaged by Khoorshedjee as his under Broker. Rupees 550 were due to Respondent as his Brokerage, out of the Freight received by Khoorshedjee from Government. Interest upon this sum amounted to Rupees 500, for Rupees 250 of which he now sued, having realized the balance from some persons at Broach, who were indebted to Khoorshedjee for Brokerage dealings.

the Government) from Ship Owners through the medium of another broker held liable for payment of his Agent's Brokerage. Usual rate proved to be one ana per Bale.

Brokerage held to be a remuneration for personal service, and interest for that reason disallowed.

Appellants denied the claim in toto, and urged, that if Respondent had any Brokerage account, he should have conformed to the universal custom of Ship Brokers, in getting his Account settled at once, by deducting his commission out of the amount Freight paid through his, the Broker's, hands to the owners, instead of preferring his claim at a distance of 10 years, when their Father died only in A. S. 1871.

Respondent said the custom of shipowners, in taking up Freight for the Freighter was in paying the Freight, to make a deduction from it of the amount Brokerage, and send it to the Broker, and so Khoorshedjee had deducted the amount of the commission from the Freight, as would be found on inspecting the Sameedustkhuts, in Appellants' possession relating to this transaction. Appellants in rejoinder denied that Khoorshedjee made any deduction for the amount Commission out of the Freight in his hands. Appellants had no witnesses to call, nor documents to exhibit in defence, except the Sameedustkhuts alluded to by Respondent, which they could not find, having mislaid the Book in which these and other Sameedustkhuts were entered.

Respondent produced his Books, from which his account with Koorshedjee Koonwurjee was extracted. It shewed, 500 Bales of Cotton shipped in A. S. 1864 and 8355 Bales in A. S. 1865 or A. D. 1809-10 on account of Khoorshedjee Koonwurjee.

Rugoo

Rugoo Bhaee Munohurdas deposed to Respondent's having shipped on board a Butella of his, on account of Khoorshedjee, 150 Bales of Cotton in A. S. 1865, for Bombay at Rupee 1 per Bale. Khoorshedjee paid half the Freight on the 8th Kartik Vud, or 7th November 1809; the balance remaining unpaid to this day. He knew that Respondent was employed by Khoorshedjee as his Broker during the whole of that year. The Broker's Commission was one ana per Bale, which the shipper always levied from the owner of the vessel, by deducting it from the amount Freight when paid by him, and the Broker therefore received his commission from his employer, though the expense fell on the shipowner. It was usual for the shipper, when the Freight was paid, to take a Sameedustkhut from the Owner, in which the Broker always was named, and such a Sameedustkhut was taken from deponent's master, mentioning Respondent as the Broker. The deponent exhibited his Book, in which Khoorshedjee was credited in Rupees 75, on account Freight, received on that number of Bales shipped by him through Respondent, for Bombay.

Balmookoondas Munohurdas deposed to a shipment of 175 Cotton Bales on his vessels by Respondent on Khoorshedjee's account. The Cotton belonged to Government, and was a balance of A. S. 1864 Cotton relanded after exportation, and reshipped for Bombay in A. S. 1865. Witness of his own knowledge spoke to Respondent's having shipped about 6000 Bales in that year for Khoorshedjee. The Broker's Commission varied from one to two anas per Bale, and the Custom on levying it was, for the owner of the Goods to deduct the Brokerage from the Freight to be paid to the owner of the Vessel, and pay the amount to the Broker, and in the account between Khoorshedjee and witness for Freight, the former had claimed and received credit for Respondent's Brokerage at one ana per Bale. Khoorshedjee had taken from him as usual a Sameedustkhut before payment of the Freight. The Court examined this

witness's

witness's Book, and found the entries as he had stated them, Respondent being distinctly named as the Broker.

Bhoolla Bhaee Pranwulubh, a Goomashta of Lal Bhaee Narayundas, the Shipping Darogha of the Customs, exhibited his Books, from which it appeared that Khoorshedjee paid the charges for shipping 4,794 Bales in 1808.

Sooleeman Moohummud gave evidence that his Brother Duolut Moohummud was employed by Khoorshedjee as his Broker between the years 1861 and 1864; that Respondent then was employed, as well as deponent's Brother, till 1866, when his Brother got the whole business of the house again. He confirmed the statements of the former witnesses, as to the owner of the vessel allowing the shipper a deduction in account for the Brokerage.

An account obtained from the commercial Resident shewed that 9,787 Bales of Cotton were shipped by him from the Ports of Surat, Broach, Jumboosur and Bhuonugur, between December 1808 and February 1809.

The Court was of opinion that Respondent had failed to prove that any Government Cotton was exported from Broach or Jumboosur, as charged for in his account for that year, and Brokerage upon the 500 Bales in his Account was rejected. The remaining demand for Brokerage on 8,355 Bales had been proved by him to the satisfaction of the Court, and it was decreed that Appellants should pay him the sum of Rupees 744-2-12 Principal and interest, with Costs of suit.

Decree 15th Sept. 1821.

Sudur Udalut, Sitting Judge, J. Romer, Chief Judge.

The grounds of Appeal were, first, that the number of Bales on which Respondent claimed Brokerage as shipped by him, was not correct; second, that the rate of Brokerage was excessive. They at the same time offered to produce the Sameedustkhut Book, which they could not find during the progress of the suit in the Court below.

The

The Sitting Judge allowed it to be produced, and on its being shewn to Respondent, he admitted it to be correct. In this Book, the Rate of Brokerage allowed by the boat Owners in deduction from the Freight, was noted at one ana per Bale. The Appellants urged that out of this ana, allowed by the owners, only one fourth was paid to the Broker, the remaining three fourths being retained as profit by the shipper, and in proof of this assertion pointed out in the Book, the Sameedustkhut of Duolut Moohummud, Brother of the witness Sooleeman, and Broker to Khoorshedjee, in A. S. 1865. The Sameedustkhut only shewed one fourth of an ana as due to him for Brokerage per Bale, and the Court wishing to gain information on this point, desired him to be called, but learning that he was dead, summoned his Brother again.

He deposed that one ana was the fixed rate of Brokerage per Bale, both with Government, and private Merchants, though less was sometimes taken, and his Brother had taken one fourth of that sum, as appeared by the Sameedustkhuts, which he recognized as his Brother's writing. He himself had never taken less than the fixed rate, but he believed agreements might sometimes be made to take less.

The Court then examined, and compared with the Sameedustkhuts of the Boat owners, the account of the number of Bales actually shipped by Respondent, as Broker for Khoorshedjee in A. S. 1865, and determined it to be 5,943 Bales. With regard to the Rate of Brokerage, there was no special contract between the parties, Respondent resting his cause on the known usage of the Trade, and Appellants pleading that since a lower rate had been shewn to be taken by another, it ought to bind Respondent. The Court held that the rate established by general usage, or one ana per Bale, ought to be allowed. He entertained doubts whether the Interest charged upon the Brokerage could be properly claimed. Brokerage was in its nature a compensation for personal service, which ought to

have

have been paid at the time such service was performed, or on failure, demanded through some Judicial proceeding. To allow the debt to lie over for a Term of upwards of 10 years, and then enhance it with a demand for interest, seemed contrary to the Equity which should govern the settlement of a claim for remuneration on account of personal services. Being of opinion that the Decree of the lower Court should be amended to the extent of taking the number of Bales shipped at 5,943, as proved by the Sameedustkhuts, and of disallowing interest, the Sitting Judge referred it for the purpose to a Competent Court.

The Court fully concurring in opinion with the Chief Judge amended the Decree of the Register to the Sudur Udalut, deciding that Respondent was only entitled to Brokerage upon 5,943 Bales, at one ana per Bale, or Rupees 371-1-75, from which was to be deducted Rupees 250, admitted by Respondent to have been since received from Appellants, leaving Rupees 121-1-75 which sum was decreed him, with Costs in proportion only, all interest being disallowed.

Competent Court, J. Sutherland, 2d *Judge*. E. Ironside, 3d *Judge*. Decree 23d May 1822.

N°. 46.

MUYARAM RAJARAM, ...
and
MT. NURBHEE, ... } *APPELLANTS*,

VERSUS

GOVIND RUTTUNJEE, ... *RESPONDENT*.

ON the 17th September 1819, Respondent sued Appellants in the Amount of Rupees 700, as the value of his wife Mt. Nurbhee's Dower Jewels. He said that he was about nine years ago, betrothed to Appellant Nurbhee, at which time his Father, Ruttunjee, agreed with her Father, Appellant Muyaram,

Sudur Udalut, Ed. Grant, *Register to the Sudur Udalut*.

Suit by Respondent to compel production by Appellants, his wife and father-in-law, of the wife's Dower Jewels.

Appellant held bound by the Shastr, to produce Dower Jewels of the value sued for, the wife's sole right to retain possession of them being reserved to her.

ram, to give Jewels in Dowry to the value of Rupees 700, and performed his agreement to the full. The Marriage was celebrated, but he had never from that time till the present seen any but one pair of paltry ornaments on her person and was anxious to ascertain the reason, as he strongly suspected Muyaram to have squandered them away. He had a better title, in right of his wife, to the Dowry Jewels than her Father, and sued them both to produce them, or account for them to his satisfaction, calling on the Court to oblige them to give good Security in the mean time, offering freely to give it himself in that amount, if his wife would make her Appearance in his house having all the Jewels on her person. She was now 20 years of age, and old enough to cohabit with him, but had never yet done so, in consequence of her Father's intrigues, nor even entered his house except for one day.

Appellant Muyaram said, the Mungnee took place in A. S. 1869, or A. D. 1811, and when the marriage was celebrated Respondent's Father brought only Jewels to the value of Rupees 300 instead of Rupees 400 as had been fixed. He since had frequently dunned Respondent's father to pay up the remainder, and the latter came to him one day, saying that the Jewels he had already delivered were not his own, but borrowed for the occasion from a friend named Koober, who was very troublesome to have them restored, and in order to accomplish this Ruttunjee offered to give up a Deed of his own house to Appellant in security for delivery of Jewels to the full value agreed upon, provided he would give up those he had already received to enable him to restore them to the real owner. This was agreed to, Appellant giving up Jewels worth Rupees 200, and receiving from Ruttunjee the Deed, and a silver ornament worth Rupees 40 or 50. The Deed was still in Appellant's possession, and of the Jewels, he had only received three ornaments worth perhaps Rupees 150 altogether, from Respondent. He added that Nurbhee alone, as sole mistress of her Dower,

was

was capable of demanding it from him, and the suit must be dismissed. Nurbhee told the same story.

Appellant Muyaram handed up the Title Deed he mentioned, which Respondent pleaded had been lost, and had probably been taken away by his wife Appellant, as he denied that Muyaram obtained possession of it in a legal way. It was a Deed of Sale by Bhana Bhut of his house for Rupees 71 to Respondent's Father, executed on the 16th Mohurrum A. H. 1217, or A. D. 1803, but bore no acknowledgment or writing to shew that it had been since made over by Respondent's Father, to Appellant.

Respondent then called two witnesses to prove that he had first given 600 Rupees' worth of Dowry Jewels out of the sum agreed upon, Rupees 700, to Appellant Muyaram, who had admitted before them to have received that value; they added that, for the balance, Respondent's Father afterwards gave two ornaments, being a necklace of venetians and a pair of silver feet ornaments, which belonged to his own daughter, to Muyaram, who upon that allowed the marriage to be celebrated after he had stopped it on plea of non-receipt of the Dower in full. Appellant's Wukeel admitted before the Court that two ornaments were received by his client prior to the marriage, and thus corroborated this evidence. Two other witnesses, named Nursee and Govurdhun, proved payment by Respondent of Rupees 258, and a pair of feet ornaments in exchange for four other ornaments returned by Appellants to him, and which Respondent gave up at the time to Koober. He exhibited a Decree of Court in the Suit No. 2268, filled by Respondent against the parties in the present cause, in the amount of Rupees 40, as damages for refusal to send his wife to cohabit with him, and on which Suit a Decree was given on the 26th June 1819 in Respondent's favor, and an injunction passed to Appellant Nurbhee to go to her husband with an order to her Father to give her no hindrance in so doing.

On

On Appellant's part, Koober and another witness were called to prove that Appellant received the Title Deed and feet ornaments only from Respondent in exchange for the other ornaments given up by him, and which they named, in number five.

The Court conceived it proved on Respondent's part, that seven Hundred Rupees' worth of Jewels had been agreed upon as the marriage dower to be paid by Respondent; that he in part did pay Rupees 600, and that Appellant's having put off the marriage till payment of the balance, Respondent further gave to them ornaments of that value, and celebrated his marriage. Appellant had adduced no proof of Rupees 400 only having been agreed upon. It was likewise clear that Appellants had suffered no loss by restoration of the ornaments, since receipt by him of an equivalent had been proved by two witnesses, and he must be held still to have possession of Jewels to that amount.

A Question was proposed to the Shastrees, to ascertain whether Respondent's claim, as set forth in his Plaint, were good in law? They in answer quoted the words of the Mitakshura, as shewn in the 11th Leaf (1) of Book the first, or "Acharadhyayu," "The Husband, the Father-in-law, and "other relations, must give to a virtuous woman, either at her "marriage or afterwards, ornaments and other things to wear "on her person; and the woman must be careful to wear these "things, whether ornaments or fine clothes, which may be "given to her, and must remain obedient to her Husband, that "he may be pleased and love her; by so doing Religion, Fortune

(1) Page 2d, line 10th, Yagnyuwulkyu, "Women are to be honored or worshipped by "their husbands, brothers, fathers, and paternal relations; (Nyati); by the mothers, fa"thers, and brethren of their husbands, and by Cognate kindred with Gifts of ornaments "Clothes, and food." The commentator says, "Virtuous women, as (elsewhere) above "described, must be honored by their husbands and the other enumerated relations, accord"ing to their means, with ornaments, Clothes, food, flowers, &c. that they, being so "honored, may cause the increase of meritorious acts, fortune, and desire." Cole. Dig. 2nd 402.

" tune and Completion of desires are obtained." A Woman must not act in opposition to the will of her husband, and therefore the woman, Appellant, must go to the house of Respondent, her husband, having all her ornaments on, and living always in obedience to him, and by so doing she will act agreeably to the Shastr. The ornaments given to a wife at her marriage belong to her alone, and no one has a right to take them from her.

It was decreed, agreeably to the above Vyuvustha, that Appellant Nurbhee should return to her husband's, Respondent's, house with Rupees 700 worth of ornaments on her person, she being permitted to retain them in her own Custody as her own exclusive property, and both the Appellants were ordered to pay Costs of Suits.

Decree 15th June 1821.

Appellants in their Petition to the Sudur Udalut accused their own Wukeel in the Zilla Court of having made a fraudulent admission of the receipt by his clients of the two ornaments, by which the lower Court had conceived payment of the Dowry to have been completed, and they now denied they had ever got them. They added that they had given to the Wukeel the names of several witnesses besides those examined, but he had conspired with Respondent, and neglected to give in Durkhasts for these persons, and Appellants prayed now to have their evidence taken.

Sudur Udalut, J. Romer, *Chief Judge.*

The Court did not conceive this reason satisfactory for the admission of fresh evidence in this cause, and refused to grant the Appellants' prayer, observing that should they suffer any damage eventually from the alleged collusion of their Wukeel with the Respondent, he must answer to them for his conduct. The Court observed that the evidence before it was conflicting and not such as could be reconciled by supposing any misapprehension of the matters deposed to, but it was disposed to give more credit to that of the Respondent's witnesses, since the Title Deed, which Koober and the other witness said was

given

given up, with a pair of feet ornaments to Appellant, was for a house valued only at Rupees 71, and therefore no sufficient equivalent appeared from their statement to have been received by Appellant for the five ornaments which they stated to have been returned by him to Respondent; and the Deed might therefore have got into his possession through his daughter, as alleged by Respondent. Under these circumstances, the Sitting Judge concurred in the decision of the Court, which was therefore affirmed in Respondents' favor, with Costs.

Decree 18th March 1822.

N°. 47.

QAZEE ULEE, BIN QAZEE UHMUD FUKEEA,..... } *Appellant,*

VERSUS

QAZEE IBRAHIM BIN QAZEE ULEE PEMODHEKUR,..... } *Respondent.*

South Konkun Udalut, W. Stubbs. *Register.*

THIS Suit was originally filed by Respondent on the 30th June 1819, complaining that about a year ago Appellant had seized upon his Qazeeship, that of the village of Jaeetapoor, Turuf Rajapoor, and Talooka Vijuedroog, profits estimated at Rupees 32 per annum.

Dispute about the Qazeeship of the village of Jaeetapoor. Decided in Appellant's favor by the Register, on the ground of possession; in Respondent's favor by the Judge, on that of his holding the last decision of the Native Government; & in Appellant's favor by the Sudur Udalut,

Appellant merely said in answer, that the Qazeeship belonged to him as descending by right of inheritance from his forefathers. Respondent replied that the Wuttun had come down to him in regular descent from the time of the Kings of Beejapoor, and he would prove it.

Appellant again urged that he had a Decree of the late Resident in his favor.

In order to explain more fully the nature of the dispute, their respective exhibits are here arranged according to their dates.

The

on that of his holding the most unexceptionable decision from the same

The first—Was from Appellant, being a Royal Furman dated 16th Rubee oos Sanee Subba Ashur wu Uluf A. H. 1021, or A. D. 1617, from the King of Beejapoor to the Umeen Ool Moolk, Mulik Utwar, and Meerza Moohummud Ruheem Thanadar, declaring that Qazees Ibrahim and Hussun (Fukeea) had represented to the presence that they were the ancient meeras (dar) Qazees and Imams of the musjid of Aeena Borsa in the district of Rajapoor, but that one Qazee Hoossain, who was appointed Naib for the purpose of doing the duty during their minority at the death of the last of their family, through villainy got a Furman issued in his own name for the Quza and Imamut, and so deprived them of their Wuttun. The present Furman was therefore granted to re-establish the Petitioners in these Offices, as of right belonging to them, and to confirm to them the bread of which they had thus been deprived, to which they had established their Title by proof of possession. It was commanded that they should be now reinstated in the Office, with an injunction to their Opponent to abstain from further molestation.

Second.—From Respondent; a Sunnud from Sumbhajee Angreea, dated 1st Rubee ool Uvvul Subba Sullaseen Miyat wu Uluf A. D. 1737, in the name of Qazee Yoosoof bin Qazee Muhmood of Jaeetapoor, granted "for the purpose of preventing "the ill effects of the loss of his old documents, destroyed in the "troubles of the times, since the granter had satisfied himself "from the Natives of the place, of that person's being the true "holder of the Office."

Third.—From Appellant; an order dated 20th Moohurrum Summan Sittaeen, A. D. 1769, from Naro Trimbuk Soobedar, directing the Villagers to give up the proceeds of marriage Fees, placed in deposit on a late occasion in a dispute for them between the complainant Qazee Yoosoof Fukeea, and Qazee Ulee Pemodhekur, to Fukeea, if he were rightfully entitled to them, but if not, to send them both to him.

Fourth.

Fourth.—From Respondent; a Sunnud passed by Muhadajee Rughoonath Soobedar, under date the 21st Shaban Isne Subbaeen Miyat wu Uluf, A. D. 1772, as a decision in detail upon a dispute between Qazee Shurfood Deen bin Qazee Yoosoof; Qazee Ulee bin Qazee Ubdoolkureem; and Qazee Kootbooddeen bin Qazee Uhmud Pemodhekur, the Qazees of the Jumaut, on the one part, and the family of Appellant, Fukeea, viz. Qazee Moohummud bin Qazee Yoosoof, and Qazee Yoosoof bin Qazee Isak, the Qazees of the Fishermen, on the other, respecting the right to officiate for the families of seven new houses, to which each laid claim; the award was against the Fukeea family, declaring that they had no right to exercise the functions of Qazee of the Jumaut, but must confine themselves to performing their office among the Fishermen.

Fifth.—An order by the same authority to the Heads of the seven new families, to consider Qazee Shurfood Deen as Qazee of the Jumaut, and Qazee Uhmud, and Qazee Yoosoof Fukeea only as Qazees of the Fishermen.

Sixth.—A Sunnud from Gungadhur Govind Soobedar, of the 1st Jumadee ool Akkir Subba Summaneen, A. D. 1787, confirming, on a fresh dispute on the same subject, the above Sunnud in Respondent's favor from the former Soobedar.

Seventh—From Appellant; Copy of an order of the 27th Moohurrum Sittu Miyat wu Uluf A. D. 1805, to the Village authority, desiring him to resign, from the 1st Zilhaz next ensuing, the Wuttun(then under attachment) to Qazee Fukeea, to whom it had been lately decided to belong.

Eighth.—From Respondent; an order of the 10th Rubee oo| Uvvul Sittu Miyaten wu Uluf, about six weeks after the above order, reversing it and directing the Village Officers to put Qazee Yoosoof Pemodhekur and his brethren into possession of the Office of the Jumaut, leaving the Fukeea family, if they chose, to prosecute their claim at the Hoczoor.

Ninth.

Ninth.—From Appellant; Copy of a Bond by Qazee Yoosoof bin Qazee Uhmud Fukeea, dated 10 days later, 20th Rubee ool Uvvul, engaging, in compliance with the above order, to prove his right to the office.

Tenth.—Copy of a letter from the late Peshwa to Dhar Rao Juggunath Soobedar, under date 15th Shuwal Sittu Miyaten wu Uluf 1806, desiring him to enquire into the case and examine their Title Deeds, and possession, and give a decision.

Eleventh.—Copy of a Niwar Putr, or award, given under the Soobedarship of Dhar Rao Juggunath on the 2d Shuwal Subba Miyaten wu Uluf, by a Punchayut of nine persons, all Zumeendars of the District, or others holding offices in it. After recording for Appellant several documents not now extant, and that noted here as First, and for Respondent those which he has now exhibited, noting his account of the loss of the older ones which he had possessed; taking evidence also of the neighbouring villagers, they found, "that the Pemodhekur,(Respondent) had not proved his side of the question, "and his excuse of loss of p apers was frivolous. The oldest "Sunnud in possession of the Fukeea family (number one) "likewise declared the Pemodhekur's claims to be false, and "with the other documents and the evidence taken by the "Punchayut, completely established their right. They found "that the Fukeea family had enjoyed the Wuttun from upwards of 200 years ago, until the time of Sumbhajee Angria, "who supported the Pemodhekurs, and gave them a new Sunnud. The possession had sinc e that time been sometimes "with one, sometimes with the other, and at this time the office "was under attachment. The y decided therefore in favor "of Qazee Hussun bin Qazee Ibrahim; and Qazee Yoosoof "bin Qazee Uhmud, Fukeea, as the Ancient Wuttundar "Qazees of the Jumaut, the Mosque, and the whole Kusba "Town of Jaeetapoor, and directed them to be put in pos-

"session

" session forthwith. The Pemodhekurs were to pay Rupees " 75, as Goonahgare," (or fine for not proving their case,) " and the Fukeeas Rupees 50, for Hurkee," (Fee for Justice always levied from the winning party under the Muhratta Government).

Twelfth.—Copy of an acquittance passed to Qazee Hussun bin Ibrahim, and Qazee Yoosoof bin Uhmud Fakeea " Qazees " of Jaeetapoor," by Moohummud Isak and Faizood Deen, sons of Shurfood Deen; and Nizam ood Deen bin Moolna Uhmud, and Wuzeer bin Kootbood Deen of that place, Pemodhekurs, on the 10th Posh Sood A. S. 1728 Kshynam, or 19th January 1807, resigning thereby their claims to whatever they had been disputing for respecting the Jumaut Qazeeship, reserving to themselves only the Qazeeship of the Fishermen, in compliance with the above award.

Thirteenth.—Copy of a Bond given by Qazee Isak, son of Shurfood Deen Pemodhekur on the 20th Rubee ool Uvvul Subba Miyaten wu Uluf, or 29th May 1807, binding himself still to prove his title to this Wuttun to be true and just.

Fourteenth.—From Respondent; *an order* upon the village, in the name of Dhar Rao Soobedar, under date the 11th Suffur Summan Miyaten wu Uluf, or 8th April 1808, directing the reattachment of the village, and the appointment of a new Punchayut, " in consequence of a representation from the Pemodhe- " kurs that the former Punchayut had decided wrong, and that " some of their Documents had been forcibly taken from them."

Fifteenth.—From Appellant. A letter written by Dhar Rao Soobedar at Sattara, under date 11th Rubee ool Akhur Summan Miyaten wu Uluf, or 7th June 1808, to Gopal Thakoor, desiring him immediately to revoke *that order*, which Dhar Rao declared to have been improperly given in opposition to a formal Sunnud granted upon a full investigation by the Punchayut, after delivery of the Hurkee in open Durbar, and payment

ment of it into the Treasury. The letter concluded by forbidding further proceedings in the case on either side.

Sixteenth.—An order from the same, accompanying this letter, to the attaching officer, to release it immediately, as no demands remained against (Appellant) Fukeea for Hurkee or Karkoonee, because both had been paid, and there could be no other just cause for the attachment.

Seventeenth.—Copy of a Sunnud, dated the 7th Rujub Jhide Ashur, or 9th August 1810, from Naro Govind Soobedar, confirming the Niwar Putr, and removing the attachment which had since been laid on the Wuttun.

Eighteenth.—Copy of an order from Ramchundur Rao Muhadeo Soobedar, on the 11th Rubee ool Uvvul Sittu Ashur, or 10th February 1816, ordering release of the attachment which had again been laid on the Wuttun by an intermediate Soobedar (Ramchundur Bhikajee Kurundeekur.)

Nineteenth.—From Respondent; copy of a Sunnud from Ramchundur Rao Muhadeo Soobedar, dated 7th Rujub Sittu Ashur, or 4th June 1816, in favor of Respondent and of Qazee Yoosoof son of Shurfood Deen, Pemodhekurs, declaring all former proceedings in favor of the Fukeea family by Dhar Rao Soobedar and others, to be null, and granting them this order for possession.

Twentieth.—From Appellant; copy of an order from the same, under date 1st Rujub Summan Ashur Miyaten wu Uluf or 7th May 1818, reversing his own above order, "because "improperly obtained."

Twenty-first.—From Respondent; an original order, without name, of the 23d Rujub Summan Ashur, or 29th May, for putting Respondent and his family in possession of the Wuttun.

Twenty-second.—From Appellant; copy of an order from Ramchunder

Ramchundur Rao Muhadeo Soobedar, dated 26th Rujub, 1st June 1818, or three days later than the above, annulling it "because said therein to have been improperly given by the "Fort of Yuswantghurh (at the mouth of the Rajapoor river nearly opposite to Jaeetapoor which is on the South or left bank) and affirming his own former order of the 1st of the same month.

Twenty-third.—From Respondent; an original order of the same writing, size, and form as No. 21, and to the same effect, dated 29th Rujub or 4th June.

The Court put a Question to the Moohummudan Law Officer, requesting him to give his opinion whether the Padshahee Furman, exhibited by Appellant, were a true Deed, or forged?

The Mooftee said, it was unusual to call a Qazee a Naib, and as Qazee Hoossain was so denominated therein, he thought the Deed a Forgery; two persons could not be named in the same Deed as Qazees, and it was contrary to the Law, to give or decree away a Qazeeship without hearing both sides of the question, and a Qazeeship could not be held to be Meeras.

All the witnesses agreed in stating that for the last 20 years, each family had alternately ousted the other, and obtained possession for different periods.

The Court decreed, that as the Documents exhibited on both sides appeared equally strong, the dispute must be determined by the fact of possession at the time of the Honorable Company's Government being established in that district. Now Appellant was known to have been in possession at that time, and as Respondent had shewn no reason for dispossessing him, that would outweigh those which Appellant had shewn for his retaining the Wuttun, possession of it was confirmed to Appellant, by a Decree nonsuiting Respondent with Costs.

Decree 7th Jan. 1820.

Respondent,

Judge's Court in Appeal, V. Hale, *Judge.*

Respondent, in appealing against this decision, pleaded that when Mr. Stubbs, whilst Assistant Resident, was at Rajapoor, this complaint among others was brought before him, and that Respondent convinced him then of his being the actual possessor the year before, and got an order for continuing him in the office, leaving the other (Appellant) to his remedy at law, but that the Kamavisdar put his opponent in, in which act the present cause originated. The Judge agreed with the Register, that if in this cause, which had formed a continued subject of dispute from time immemorial, the Court were to be guided by ancient documents, or continued possession, the claims of the parties would be found nearly equal. He considered it however as one clearly to be decided upon the Principles of Section 15th of Regulation 1st of 1800, and that under this view the Deed, marked as No. 19 among them, was the last decision on the case which could at all be considered as a legal decision of the former Government. Under it Respondent decidedly enjoyed possession until the 1st Rujub, or 7th May 1818; after that date contrary orders were issued, bearing date 23d and 29th Rujub or 29th May 1st and 4th June, but the whole of them, beginning with that of the 1st Rujub, were issued while negotiations were actually on foot for the cession of the province to the British Government, and therefore not entitled to the smallest attention. On these grounds, the Court conceived itself bound to decide according to the decision marked No. 19, which declared the Wuttun to appertain to Respondent, in whose favor a Decree was accordingly passed, reversing that of the Register and granting Respondent his Costs.

Decree 20th April 1820.

Sudur Udalut, Sitting at Rutnagiree, before S. Babington, *Fourth Judge.*

Appellant recapitulated the facts of his case, as above shewn in the exhibits, and pleaded that this suit was not admissible, because it had been formerly decided by competent authority, in proof of which he handed up a Decree of the late Resident dismissing Respondent's claim, preferred for the same Wuttun against him. It was dated 24th November 1818. The Court thought that though there was much contradictory evidence,

yet

yet Appellant's case was on the whole better supported than that of Respondent. The former had produced an authority so far back as Subba Ashur wu Uluf, A. D. 1617, with a formal award confirmed by the Soobedar in A. D. 1807, followed by an acquittance from Respondent under the Terms of the award, and an order from Ramchundur Rao Muhadeo in A. D. 1816. The latest of the documents given in on both sides were rejected also by this Court in evidence, as too close upon the transfer of the Country to be of any value. There was great doubt who had been officiating as Qazee for the last 25 years, but it was established that Appellant was in possession the year preceding our acquisition of the territory. The Judge had reversed the Register's decision in favor of Respondent, on the ground that he possessed the latest authentic Sunnud, No. 19, but it should be recollected that the same Soobedar gave one No. 18 equally decisive in Appellant's favor, only four months before, and in one month afterwards two in favor of each party. The Court considered the Appellant's being in possession, joined to his having the oldest Title, and an award of arbitration in his favor, to give him a decided advantage over the Respondent, and therefore reversed the Judge's Decree, and affirmed that of the Register in Appellant's favor with his Costs from Respondent.

Decree 29th April 1822.

N°. 48.

SHEKH UZEEZ OOLLA, SHEKH HAFIZ.. APPELLANT,

VERSUS

HIS WIFE GHUFOOR BEEBEE, Daughter of SHEKH GHOOLAM ULEE.... RESPONDENT.

Surat Udalut, Ed. Grant, *Register to the Sudur Udalut*,

ON the 2d February 1820, Respondent filed a suit in the Zilla Court against Appellant, her husband, in the sum of Rupees

pees 550, to oblige him to make good her Dower, fixed at that amount. She said that she was married about six years before to Appellant, who agreed with her Father to give as Muhur, or Dowry, Jewels &c. worth Rupees 550, and received from her Parents her Juhuz, or Portion, worth between 700 and 800 Rupees. Soon after the marriage her Father went abroad, and having no son living, gave over charge of all his property to Appellant, the husband of his daughter, who took possession of every thing left by Ghoolam Ulee, even to his account Books and furniture, and now refused to give her the Dower he had agreed with her Father to pay. Respondent was further induced to sue for it by continued ill-treatment received from him, and declared her resolution also to claim possession of her Father's Effects by a distinct suit, when she had procured funds by recovery of the Dower.

Claim by Respondent, a Moohummudan woman, against her Husband, to obtain possession of her Muhur, or Dower. Defence, that it had been made up to her in Buree, or marriage Presents.

Held under the authority of the Moohummudan law, that marriage presents cannot be counted in lieu of Dower without the wife's consent, which not having been obtained the husband was still liable for the Dower.

Sudur Udalut Law Officers differed from this opinion, but the Decree was affirmed for want of proof on Appellant's part of delivery of marriage presents.

Appellant said Ghoolam Ulee and himself were very intimate, and the former by importunity prevailed on him to consent to the marriage, at the celebration of which Appellant gave ornaments, clothes, and valuables, as Buree or marriage Presents, to more than the value of the Dowry fixed on, and to which Respondent had now no claim. Ghoolam Ulee was dead, and his widow had conspired with others to keep his wife away from him, for which injury he was about to sue for damages, which made them prefer this demand. It was contrary to the custom of his Father-in-law's class to give portions with daughters, and Respondent had therefore no grounds for making this claim, which he prayed might be at once thrown out.

Respondent denied that she had received the value of the Dower, since the Buree, or Presents before marriage, were never counted in lieu of Dower, or Muhur, and in fact the few things Appellant had given her were all seized and carried off by him from her Father's house with the other property. The marriage presents were given in return for the portion, or Juhuz, usually

usually given with a daughter on her marriage, and were quite distinct from the Dowers to be given by the husband.

Appellant declared again, that as it was not customary for the bride's Father to give a portion to the Bride; what he had given in presents, and Respondent had in part acknowledged, must be reckoned as in payment of the Dower. As to his taking forcible possession of his Father-in-law's effects, it was totally false.

The Court asked the Moohummudan Law Officers, whether, on a wife claiming payment of her Dower from her husband, he might urge in defence that the marriage presents were given in part of the Dower, and whether the Wife could in like manner plead that her Portion was a sett-off against the Marriage presents, leaving the Dower to be separately accounted for by the husband?

They answered, according to our Law, on a quarrel occurring between man and wife respecting the marriage presents, and the portion, they are each at liberty to claim and recover the portion, or Presents, as the case may be, with the exception of all eatables and perishable articles, on their proving the amount, However, unless the wife have agreed to receive the marriage presents in lieu of Dower, she shall not be compelled to do so for this reason, that the Dowry is a sum or value which the husband has agreed to pay to his wife, on his own risk, as is written in the Futtava Alumgeeree.

Appellant then handed to the Court a List, purporting to be a "memorandum of ornaments, clothes, &c. given by Meean "Uzeez Oolla on his marriage, as Buree, in part of Muhur, "23d Suffur 1230," or 4th February 1815. The articles amounted in value to Rupees 754-2-0.

With this he gave in the answer of the city Mooftee to a question propounded to him, requesting to know whether the clothes, ornaments, and presents given to a Bride on her marriage

riage were considered by the Law in the light of Dowry, or as only lent to her? To which question the Mooftee had answered, that whatever ornaments, clothes, or other things are presented by the Bridegroom to the Bride, on the day of their marriage, are *all* to be taken as in part payment of the Dowry; this, under the authority of the Fiqua Hemufeea.

Four persons called in evidence by Respondent, all agreed that her Father gave her for a Portion, four dresses, with 9 or 10 Silver, and 8 Gold, ornaments, which portion they valued at between 700 or 800, one said 850, Rupees. They agreed too that Appellant gave her some Clothes and ornaments, but could not say how many, or of what value. They proved that Appellant took possession of all Ghoolam Ulee's effects as Respondent had stated.

Appellant called three witnesses. The first, Usud Oolla, deposed, that Appellant sent Ornaments worth 600 or 650 Rupees, and Clothes worth about 200 or 250 more, for Buree, or Marriage Presents, in part of the Dower, or Muhur, on his Marriage, keeping a Memorandum of the things, and sending another with them, but no receipt was taken from them. The Dowry was fixed at Rupees 550. No Juhuz, or portion, was received by Appellant from his Father-in-law, but the latter sent his daughter four dresses, and some ornaments afterwards. Witness could not say whether any agreement was made to take the Buree, or marriage Presents, in part of the Muhur, or Dowry, or not, as there was no dispute about it at that time.

Meerza Huyat agreed with this witness in his account of the value of the Buree. He was one of those who carried the things to Respondent's house, with a Memorandum of them, written on red paper. He asked for a receipt, but it was not given, Ghoolam Ulee merely sending some eatables in return, with a sheet for a bed. He said that Rupees 550 were agreed on as the Dowry, and added that Ghoolam Ulee did verbally acknowledge receipt of 750 Rupees worth of Effects, as Buree

on

on that account. Witness had seen Respondent go to her husband's house with the ornaments on her person.

Peshtunjee Dhunjee, the third witness, was called as writer of the List, and deposed to having written two Lists, one upon red paper, which was sent with the Buree, and the other, a copy of it, being that which Appellant had exhibited in Court, and now verified by the witness.

Respondent gave into Court a Paper, being an Extract from the Siyah-i-nikka, or "marriage Register," of the Qazee of the City of Surat, who officiates also as Kuazee to the Court, dated Saturday 24th Suffur A. H. 1830, or 15th February 1815, which shewed that the marriage of the parties was celebrated on that day, the Bride and her Father being represented by the proxy and the proxy being attested by two witnesses. The other persons present were noted down as witnesses to the ceremony, and the amount of the Dowry was inserted in the Book at Rupees 550. The Qazee was called into Court to verify this Extract, which he did, explaining to the Court, on being asked whether it was customary always to note down the value and number of Jewels &c. given to the Wife by the Husband as her Dower, that he had established the plan within the last year, in consequence of the many disputes which had arisen on the subject.

Appellant exhibited two Futwas formerly given by the Law Officers, one in the Assistant Register's, the other in the Umeen's Court. The first was upon a Question, whether a woman whose husband had gone abroad, if she refused to live with his sister during his absence, could recover from her husband the amount of her expenses for food and raiment up to his return which question they answered in the negative. In the other the Umeen wished to know whether, in the event of a man giving to his Bride, at the time of their marriage, Clothes and ornaments, such Effects would be considered as in liquidation of part of the Dowry or not, and whether such Effects should be valued, as ascertained at the date of Gift, or at their present

value?

value? To this question the Law Officers answered, whatsoever Clothes and ornaments the husband may have given to his Bride at their marriage, shall be taken at their actual value when given, and allowance shall be made to the husband for the amount, in making good the Dowry.

The Court asked the Qazee, what was customary to be done when a Wife demanded her Dower from her husband, supposing the words "Mooajjul" and "Muvujjul," or "in hand," and "in expectancy" were not entered in his Register? He replied, that the husband must comply with the demand, whenever made.

After an attentive perusal of the case, the Court found, from the opinion of the Law officers, that a husband is obliged to give the amount of marriage Dower first agreed on. Appellant had asserted that he gave to Respondent Jewels &c. to the amount of Rupees 754-2-0, but he had not proved it by any evidence, besides which, whatever amount of goods he might have given to Respondent, it was not shewn that she consented to take them in lieu of her Dower, as from the opinion of the Law officers appeared to be necessary to make this defence valid. Wherefore it was decreed, that Appellant should pay to Respondent the sum of Rupees 550 together with all Costs of the present Suit, provided always, that this Decree should not be a bar to his prosecuting Respondent for whatever amount of Jewels he might think himself entitled to.

Decree 29th August 1821.

The Sitting Judge of the Sudur Udalut remarked in the case a contradiction in the testimony of Meerza Huyat and Ussud Oolla respecting the Respondent's Father's acknowledgment of the Buree presents having been received in satisfaction of the Dower. From a verbal reference to the Law officers, it appeared that if due notice be given at the time of sending and delivering the Buree presents, that they are made in satisfaction of the Dower so far as their value extends, the formal acknowledgment to this Effect of the Wife or her friends, was not

Sudur Udalut, *Sitting Judge*. J. Romer, *Chief Judge*.

not necessary. Now in the List, which had been proved, it was expressly stated that the presents were made in lieu of Dower. It was necessary to procure the original List, on red paper, and Respondent was directed to search for and produce it. It was not forthcoming, and Respondent urged, that in the pleadings of the lower Court, the List on record was mentioned as an original, not as a Copy; and also that Buree presents were then stated to have been made exceeding the value of Dower, whereas the List purported to be for presents made in lieu of the Dower, such a declaration moreover being quite unusual on a List of Buree presents.

The Sitting Judge was not satisfied with the proof adduced by Appellant that the Buree presents were made and declared to be in satisfaction of Dower, and would have affirmed the Register's decision, but in consequence of the insufficiency of the evidence resolved to commit the cause to the Judgment of a competent Court, which seeing no reason for interfering with the decision already passed, affirmed it in Respondent's favor, Appellant bearing Costs.

Competent Court, J. Sutherland, *Second Judge.* E. Ironside, *Third Judge.* Decree 23d May 1822.

N°. 49.

BHOOLLA KHOOSHAL, Pauper..... APPELLANT,

VERSUS

SHEOLAL KOOBER; WENEE NURSEE; HUREE BHAEE SOONDURLAL; KOOBER GOOLALCHUND; BEHCHUR GOOLALCHUND; PRANWULUBH BHUGWAN; SAKURCHUND BUNMALEE; AND KUHANDAS SANTEEDAS..... } RESPONDENTS.

Surat Udalut, Edward Grant, *Register to the Sudur Udalut.* Coppersmiths.

APPELLANT on the 22d July 1820, instituted a Suit in the Surat Court against these eight persons, as Mookadums of the Cast of Coppersmiths, for Rupees 825, value of property deposited with them by Mt. Bijlee, Widow of Appellant's

lant's late second Cousin, Bhugwan. It appeared from his Account, that he and Mt. Bijlee jointly defrayed the funeral expenses of her husband, who died about 20 months before filing the Suit, and Appellant was persuaded by Respondents to feast the Cast on his own account, under a promise from them that he alone should succeed, as Heir of Bhugwan, to that person's property, after Mt. Bijlee had contracted a second marriage, under which pretence they likewise persuaded him to pass a Farighkhut to Mt. Bijlee. Respondents had also taken upon themselves, as Mookadums, to mortgage Bhugwan's house for Rupees 300 to a Bunyan, which act Appellant had endeavored to set aside by appearing in the Registry Office to stop Registry of the Bond. His objections were then overruled, on the grounds that Appellant had no legal claim, as Heir, to stop the Registry, until he became so by Bijlee's contracting a second marriage. Appellant could say nothing to this, but as Bijlee had celebrated a second marriage only eight days ago, he now came forward to claim from the Respondents delivery to him of the house, ornaments, and household Effects, of the late Bhugwan, given into their possession by Bijlee on her marriage, and which they refused to surrender to him, the legal heir of Bhugwan.

Claim by Appellant, a Coppersmith, against the Mookadums of his Cast, for recovery of property put into their hands by the widow of his second cousin on her marrying again; and by that act reverting to Appellant as next Heir to the deceased.

Receipt by Appellant of part of the Estate from the widow herself proved.

Application by the Cast of the Widow's directions held not to render them liable to Appellants.

Respondents positively denied the claim, as false and unfounded. Appellant had demanded from them, as of right belonging to him, certain property delivered to their care by Bijlee when she contracted her second marriage, to which they had answered, that Bijlee had never, either at that time or before, given them any thing whatever, adding that she was her own mistress, and at liberty to give her property to whomsoever she pleased. They now pleaded that if Appellant had title to succeed to Bhugwan's property, Bijlee alone, who had made away with it, was the person responsible to him. They also denied any admission by them before the Cast, of Appellant's presumptive right as heir, or that the Register gave any such opinion as Appellant had written. Appellant said he could prove by the Foujdaree

Records

Records that Respondents had turned him out of Bhugwan's house, and possessed themselves of the Effects.

Respondents rejoined that they had mortgaged the house to Heerachund Soorchund at Bijlee's request to defray debts contracted for the funeral of her husband, as she was much distressed to raise funds for it, and Appellant having passed to her a Farighkhut, she was the sole mistress of her own actions, and might do with the property as she pleased. They explained their management of the Estate on the part of Bijlee, and the state of the debts against it.

Five witnesses called by Appellant deposed to a meeting of the Cast, at the Hunooman in Atmaram Bhookun's Garden, where Appellant was admitted by the Cast to be the presumptive Heir of Bhugwan, and a paper was drawn up, which the Mookadums kept, in which it was declared that Appellant was Heir to Bhugwan's Estate, consisting of a House, 200 Rupees worth of effects, and 300 Rupees worth of ornaments, and that this property should be surrendered to him accordingly. They could not say whether it was actually given up to him or not. One of them admitted that Appellant passed a Farighkhut to Bijlee. Respondents called upon Bijlee, who deposed that she borrowed Rupees 200 from Heera Shah for the funeral expenses of her late husband, and Respondents with her permission mortgaged her house for Rupees 300 to cover this debt, which she paid out of the amount, and gave the balance in liquidation of other debts of the Estate; that she gave her Jewels into the custody of the Cast before her second marriage, and they delivered them to Appellant, who passed to her a Farighkhut in acquittance of his claim upon her.

Juggunath Deochund deposed that Bhugwan in his last moments verbally directed, " that, his funeral expenses having " been defrayed from his Effects, with the Balance if any, a " dinner should be given to Brahmuns, and a Turban given " to such of his Relations as should celebrate his obsequies,

" declaring

" declaring that no one had any claim to the property which " he left." Bhugwan's Mother and widow performed the funeral ceremonies, borrowing Rupees 200 for the purpose, and mortgaged the house to pay it off. Respondents wished Bijlee to sell her Jewels, but she observed that she should not be able to do without them in case she should remain a widow for a year or two, and perferred mortgaging the house. The mortgage was made in the name of the Mookadums, at Bijlee's particular request, for she said in the event of her marrying again, as she hoped to do, she should have to give up all the property. Appellant received on her second marriage every thing belonging to her. The delivery of the property by Bijlee to Appellant before her marriage through the Cast, and Appellant's passing the Farighkhut to her, were proved by other witnesses. Heerachund proved his lending Rupees 200 to Bijlee, and repayment of the money by mortgage of the house. Premkoonwur, mother of Bhugwan, corroborated the other evidence respecting the mortgage, delivery of the Jewels by Bijlee to the Respondents, and by them again to the Appellant.

Respondents exhibited the note passed by Bijlee and Premkoonwur to Heerachund for a loan of Rupees 200, to defray the expenses of Bhugwan's funeral. The object of exhibiting this was to prove that Appellant sanctioned the transaction by signing the note as a witness, as was sworn to by the persons called above by Respondents, and admitted now before the Court by Appellant, he pleading however that the money had not been received.

An extract from the Foujdaree Duftur, under date the 13th June 1820, shewed that Appellant laid a criminal information against Respondents on that date, for having broken open his house, and carried off property, which complaint was declared to be more of a civil than of a criminal nature, and dismissed accordingly.

The Court was of opinion in this case that it had been satisfactorily

factorily proved that Respondents, with consent of Bijlee, mortgaged her late husband's house for the sum of Rupees 300, for defraying his funeral expenses previous to her second marriage, whilst Appellant had by no means proved that Bijlee deposited Jewels &c. to the value of Rupees 500 with Respondents before her second marriage; neither did he prove that Bijlee ever had Jewels &c. to the value, or amount set forth by him, belonging to his late cousin Bhugwan. But it had been proved by the evidence of the Respondent's witnesses, that Bijlee made over to Appellant the whole of the Jewels &c. that she had in her possession, and that he gave her a receipt in full before she married a second time, and which Appellant himself acknowledged. It was not therefore likely he would have done so without having received his dues from her, or at all events he would have taken some kind of writing from her for whatever else he thought himself entitled to. The Law Officer said that a Widow had full power over the Effects of her deceased husband, so long as she did not contract a second marriage, and it was in consequence decreed that Appellant be nonsuited, and pay all costs from any property he might then or thereafter be found possessed of, Respondents in the mean time bearing their own costs, until such time as Appellant should be found to possess property to defray the same.

Decree 12th Sept. 1821.

Sudur Udalut, *Sitting Judge.* J. Romer, *Chief Judge.*

The Sitting Judge observed that the question to be decided, was whether the property in dispute had been lawfully and duly appropriated to the payment of the debts of the deceased Bhugwan, and to the expenses incidental to his funeral rites, in having been so applied by his Widow Bijlee, through the instrumentality of the Respondents, as Mookadums, or Patels of their Cast, previous to her contracting a second marriage. Although there might be some doubts as to the regularity of the Punchayut's proceedings, the Court agreed in opinion with the lower Court, that there was no proof of the misappropriation of the property in dispute, but Respondents on the contrary had shewn it to have been applied to the purposes above mentioned,

mentioned, and certainly it did not appear to have remained in their hands, or to have been expended for their use, or in any way that should render them answerable to the Appellant. The decision of the Zilla Court was therefore affirmed against him with full Costs, to be borne as adjudged in the Court below.

Decree 15th April 1822.

N°. 50.

SHURFOOD DEEN Patel & GHOOLAM ULEE,..... } *Heirs of Mt. Umma Beebee,*
SHEKH MOOHUMMUD WULD MHUMDOO DADA, } *Heir of Mt. Aeesha Bebee and Moohummud Dada,*
QADIR MEEAN WULD MEEAN RAYA,..... } *Heir of Mt. Sara Beebee and of Meean Raya,*
and these persons, as Heirs of Mt. INAYUT BEEBEE,..... } *APPELLANTS,*

VERSUS

SHUMSOOD DEEN SHAGUR, and MOOHUMMUD IBRAHIM SHAGUR,..... } *RESPONDENTS.*

North Konkun Udalut, A. Bell, *Register.*

APPELLANTS filed their Suit on the 21st December 1820, in the amount of Rupees 800, with a view to prove their right to a house, of that value, on which Respondents had caused a notice of Mortgage to be affixed. Appellants said the house in question belonged to Ghoolam, late Son of Moohummud Hoossain Hool Naik, who formerly lived in it himself, but made it over to them in Gift by a Hibbu Nama, dated 12th Zilkad A. H. 1221, and which was registered in the Udalut, on the 5th Rumzan, A. H. 1226, or 18th November 1811, and under it they had held possession of the house, as would be proved by the repairs they had made. They let it to Respondent Moohummud

Claim to removal of notice of mortgage laid by Respondents on a House bestowed in Gift on Appellants by the former owner.

Mortgage defended and Appellants' title sought to be invalidated,

on a plea that the Donee only held the house in mortgage of Respondents' ancestors.

Plea declared good in the Zilla Court, but set aside by the Sudur Udalut, which decreed removal of the notice of mortgage.

Moohummud Ibrahim, he paying Rent to them, and this notice was the issue of a conspiracy between the Respondents to rob them of this house.

Respondents in answer denied all knowledge of the person named by Appellants as the original Owner of the house, or of the Hibbu Nama they spoke of, and said their own Father built the house himself, and rented it out for some years to Ghoolam Wuldeh Sooleeman Hool Naik. Their Father afterwards borrowed Rupees 225 from that person, and mortgaged the house to him, allowing the Interest to be covered by the Rent. They admitted that no writing was passed, but the debt was entered in their account Books as a mortgage. After the death both of Respondents' Father and of Ghoolam Sooleeman Hool Naik, the latter person's Sister, Mt. Inayut Beebee, took up her abode in the house, and let out part of it in lodgings. She had also repaired the house, and dying lately, her Nephew, Dadoo Meean, Son of Ghoolam Moohummud bin Jaffur Moohummud Hool Naik, became her real Heir, and not Appellants, as they claimed to be. In order to repay to this person, as Heir of Inayut Beebee, the Mortgagee, the expense of the repairs, and to clear off that mortgage, Respondents had borrowed the money from a Merchant, and having executed to him a regular Mortgage Bond, had caused notice of the ensuing Registry to be affixed upon the house, and this gave rise to the present Action.

Appellants replied that this house at Thana was included by Ghoolam Moohummud Hool Naik with the rest of his property, given under the Hibbeh Namu to his three Daughters, and Sister, the persons to whom they, Appellants, were Heirs, and their Title to succeed whom they were ready to defend against any one. Respondents' pretence about their having originally only mortgaged it to Appellants' Family, was shallow on the face of it, since they admitted it was not supported by any writing, and they would prove that Ghoolam Moohummud Hool Naik

Naik repaired the house at an expense of Rupees 600, which Respondents never interfered to prevent.

Appellants handed up three Documents, the first the Hibbeh Namu, dated 12th Zilkad A. H. 1221, and registered on the 18th November 1811 by Ghoolam Moohummud Hool Naik, giving and bestowing all his property, real and personal, to his Sister Inayut Beebee, and three Daughters Mt. Aeesha Beebee, Umma Beebee, and Sara Beebee. The second, A Power of Attorney by Ghoolam Moohummud Hool Naik, in the Name of his Son-in-law Shurfood Deen Pithowree, for collecting the Debts of his principal, and dividing them out in four equal shares among the four Heirs, named in the Hibbeh Namu. This was dated on the same day as the Hibbeh Namu.

The third, the notice, " to all persons having an interest in " the house in dispute to appear within 15 days from its date, " 11th December 1820, in the Registry Office, to state their " claims and prevent the Registry, in default of doing which " their claims would not be heard."

Hussun Moohummud Oolkoope, deposed to the fact of repairs having been made to the house by Hool Naik; to the possession of it by him or his family since A. S. 1731 or A. D. 1810, and to the execution of the Hibbeh Namu by him. Witness added that the house was said to have belonged to the Phundgur family, of whom Ghoolam Hool Naik had received it in Mortgage.

Meean Hubsh Carpenter proved repairs of the house by Ghoolam Hool Naik, in which both witness and his Father were employed, and paid by Hool Naik.

For the Respondents, Ubdool Qadir Sonde deposed that he had lived forty years at Thana, and that during that time Ghoolam Hool Naik inhabited the house. About 16 years ago Respondent Moohummud Ibrahim carried witness to him as evidence of the amount of the debt between them. Ghoolam Hool Naik

asked

asked him what brought him there, and being told the reason, went in doors, brought out his Books, and shewed an Item of Rupees 225, which he said was due by Respondents' Father, and which Respondents then admitted to be due; and Ghoolam Hool Naik said he would excuse him the odd Rupees if he would pay the rest down. Witness heard no mention made of any house, nor was any thing entered in the Books about it. Appellant Shurfood Deen Patel, son-in-law of Ghoolam Hool Naik, and husband of Umma Baee, took care of the house since Ghoolam Hool Naik's death.

Brij-Bhookun Narayundas deposed that he was about 16 years ago desired by Ghoolam Hool Naik, who lived in the house as mortgagee, to go to Respondents and demand from them the debt of Rupees 225, and either to pay it with a small deduction for ready Cash, or to take Rupees 200 more from him, and complete a sale of the house to him for the whole amount. Witness added that on their offering the Cash, Respondents flatly refused to sell the house, but said Ghoolam Hool Naik might remain quietly in the house. He admitted that Ghoolam Hool Naik repaired the house, and had lived in it about 40 years.

Respondents declined calling any of their other witnesses.

The Court thought from the evidence of the last witness, that the house was given in mortgage to Ghoolam Hool Naik by Moohummud Hoossain, Father and Uncle of the two Respondents, for Rupees 225, and that the mortgagee made an offer about A. D. 1811 to advance Rupees 200 more to Respondents, and to purchase the house. It was therefore decreed that Respondents should pay to Appellants the sum of Rupees 225, and on so doing should receive the house, each party paying their own Costs in this Suit.

Decree 22d Sept. 1821.

The Sitting Judge held that the alleged mortgage could not be allowed to stand in the face of the Hibbeh Namu, wherein

Sudur Udalut, *Sitting Judge.* J. Sutherland, *Second Judge.*

Hool

Hool Naik declared the house to be his, and which was executed in so public a manner as long ago as 1811. Respondents' case was materially weakened by their having no documentary evidence whatever; the Sitting Judge had no hesitation in declaring in favor of the Hibbeh Namu, and referred the case to a competent Court, giving his opinion that the notice of mortgage should be removed, and Respondent be restrained from all further molestation to Appellants' rights of ownership.

The Court agreed in opinion with the Second Judge, thinking that there was no evidence whatever of the house having belonged to Respondents' Ancestors, neither was there any sufficient proof that Ghoolam Moohummud Hool Naik ever received it in mortgage. The Register's decision was therefore reversed, and a decree passed, ordering removal of the notice affixed to the Premises by Respondents, who were adjudged to pay all Costs.

Competent Court, J. Romer, *Chief Judge.* E. Ironside, *Third Judge.*

Decree 30th May 1822.

N°. 51.

KHANOO RAOOT KULVEKUR.....*APPELLANT*,

VERSUS

DHUNBAJEE KAN, Patel Gowlee......*RESPONDENT*.

ON the 6th June 1820, Respondent filed a suit against Appellant for Rupees 1,574-3-40, due as follows:—Respondent, the Patel of Hedee, a Hamlet of the village of Keve, in the Purgunna of Munohur, Prant Wussee, (Basseen) traded as a timber merchant. In Tissa Ashur A. D. 1818–19, having collected a large quantity of Timber of all sorts and sizes, 441 pieces, he in the month of Margsirsh floated it down the River Dehurje, to the Bundur of Puretee in the Munohur Purgunna, to which place the tide reaches. Having there properly secured it,

North Konkun Udalut, W. A. Jones, *Acting Judge.*

Suit for the recovery of certain Timber belonging to Respondent set adrift by a Fresh in a River in the North Konkun,

and detained by Appellant the Timber Farmer.

Defence that Drift Timber became the property of the Government and thereby of its Farmer.

Right of the Farmer admitted within certain limits. Respondent's Timber exempted as not being within those limits, and the right to recover upheld. Amount of Respondent's damages fixed by arbitration in the Sudur Udalut.

it, he was about to carry it down to Aghasee Bundur, but left it there until he had paid the dues to Appellant, the Farmer of Timber, of a Tizaee, or third, for which Appellant passed him a Kuol or settlement in the month of Magh. The neap Tides were then prevailing, by which Respondent was prevented from carrying the timber down, and the Floaters returned, and left them. At the next springs, on the 15th Jesht Sood or 18th June 1819, Respondent again sent people to secure the timber and carry it down part of the way to Munohur Bundur, but the Fresh came down, which, added to the force of the spring tides, broke the timber adrift, and Respondent and his people busied themselves in collecting it, landing what they recovered at Dokve and other Bundurs. In the month of Asvin following he wanted to send it all to Bombay, but Appellant's people prevented him from taking it away. He was unable to attend an investigation before the Collector, and Appellant therefore had been allowed to carry off the Timber, which Respondent now sued to recover. It was valued by him at Rupees 1,827, from which deducting Appellant's Tizaee dues, Rupees 252-0-60 left Rupees 1,574-3-40 the amount sued for.

Appellant said he did not know what quantity of Timber Respondent might have had on the River, but it was unusual for him to grant a Kuol in the manner Respondent had stated, and in fact he did not give it. The Farmer never made any settlement for Tizaee dues on that river, except at Kolse Bundur, where alone all such claims were settled, and if without its being settled any Timber should drift in the Fresh from any place above Kolse Bundur, below Khambolee, it became the property of Government, and by the terms of the Kuol or Lease which Appellant held from the Collector, as Farmer, all loose Timber of this kind was resigned to him. Therefore all the Timber now claimed, with that of other persons which, owing to the carelessness of the owners, was allowed to float down in the Fresh below Khambolee Bundur, and was landed at the lower Bundurs of Sirgaon, Dokve, and Vesave, became the

property

property of the Farmer under his Lease. He could not say how much of this belonged to Respondent, nor was it entrusted to him, that he should now account for it.

Respondent pleaded that the suddenness of the Fresh prevented him from passing the Timber at the usual place, Kolse Bundur; and with regard to Appellant's claim upon all Timber drifting below Khambolee, he would prove that Appellant had given up that belonging to other Merchants in the same predicament.

Respondent gave in the Kuol, which was dated 9th Rubee ool Akhir Tissa Ashur, and purported to be given at the request of Respondent by the Farmer's Office at Kolse, as a commutation of the usual Tizaee, for the following rates of charge, per score (Kodee), for Timbers 16-1; for Posts Rupees 12-2-0; for sticks Rupees 3; and for Rafters Rupees 7, the Farmer thereby engaging to exact no more than these rates.

Appellant opposed to this his own Lease or Kuol from the Collector, dated 24th October 1819. It stated that the Appellant had taken the Timber Farm, as highest bidder at public outcry; the Farm to commence from the 5th June (Mrig Sal) of the year 1818, and to last two years, until the 4th June 1820. It was to include the Munohur and Bhatan Creeks, and the rights transferred to the Farmer were thus detailed.

The Tizaee upon Teakwood in the Kamun Turuf.

The Cart Tax in the Manik Poora.

The Proceeds of Fees on the sale of old vessels, and others newly built for other Ports.

Drift Timber coming down in the Freshes.

All Timber in the Belij Creek and Bundur.

All Control over Floaters, owners, Office people, and others.

The above rights were made over to him without reserve, together

together with the Deshmookhee Fees, for the above term of two years, for the following consideration. A payment of Rupees 9,051, in Tissa Ashur, A. D. 1818-19, and in Ashreen, A. D. 1819-20, the same sum, each sum to be paid in three instalments.

Some witnesses said that they were employed to collect the drift timber belonging to the Merchants, and to Respondent among the rest, and which broke loose after it had been secured, but they could not say what number of timbers belonged to Respondent among those collected, in all about 100 pieces. The timber was brought from the Bundurs of Kore, Muthane, Yedwun, Dantioore, Joohoo, Phophlee, Wadees, Wagholee, Wuthar, Urnal, and other places below the Fort of Urnal, and were deposited at the Bundurs of Dokve, Tembhee and Dantioore. These timbers were afterwards taken away out of the care of the witnesses by Appellant, who paid their charges on account of them, but nothing was paid by Respondent. They admitted that all timber drifting below Khambolee became the property of the Farmer, but all the above named Bundurs were below that place. Keve, and Puretee they said were between one and two Koss above Kolse, the place where the duties are levied.

Ramajee Muhadeo Kurpe, a Karkoon formerly under the Basseen Sooba, said that from the year Ashur till Sittu Ashur, A. D. 1810 till 1816, the Timber office was not let out, but managed by the Sooba, and that it was not customary to confiscate the drift Timber, but to restore it to the owners on payment of the expense of saving it. The Government Duty was a third, or Tizaee, and the Exaction of this Tizaee was made on its reaching the salt water of the Tides, which in witness's time was reckoned to be at the Bundur of Ookle. He confessed that the question of right to drift timber never arose in his time, as there was no instance of the loss of any by freshes. He had heard the old Farmer say that drift timber was to be restored, and this was his only authority.

Sukharam

Sukharam Sudaseo and Sudaseo Yesswunt Shetteea said that all timber coming down with the fall of the first rains after being once secured, was restored to the owners on payment of a duty, but all drift timber after that became the property of Government.

Diwalia Koolwarree, said he and others collected about two hundred pieces of timber, for which they were paid by Respondent, by two other Merchants and by a Karkoon of Appellant for their trouble, and that all the timbers were carried off by Appellant from Dokve Bundur; where they were landed. He allowed that the custom was for Government to take all that drifted below Khambolee, but that this timber was all recovered above that place, from it as high up as Munohur.

Appellant exhibited copies of five Depositions given in a Suit filed against him on the same account by another person, who was nonsuited, as was proved by copy of the Decree of the Register's Court in favor of Appellant's right under the collector's Kuol. Two of these witnesses were the same Sukharam Sudaseo, and Sudaseo Yesswunt above named. In these depositions it was distinctly declared, that all drift timber floating below Khambolee, belonged to Government, and all recovered above, was restored to the owners on their paying the Tizaee duty, and expense of salvage, whilst Government only kept to itself such stray pieces of timber as were decidedly without owners.

The most distinct and reasonable evidence in the cas ewas that contained in one of these depositions, given by Qazee Moohummud Ibrahim, who said, First, That where timber was cut by the Merchants and brought down to the bank of the River, and there carried off by a fresh, all that drifted down below Khambolee belonged to Government, and all secured above that place in the Munohur Turuf, was restored to the owners. Second, That where the merchants themselves put timber afloat, and it was afterwards carried off by the Fresh,

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the Government restored it on repayment of the expense of collecting it. Third, when timber had been floated down in the regular manner, and secured at one of the Bundurs, and was then landed in consequence of the lateness of the season, it was, if carried off by a fresh after that, restored to the owners, and Fourth, If it were brought down by them, but not actually secured at any of the Bundurs, all drifts from it became the property of the Government.

The Court held that Appellant had carried off Respondent's timber contrary to the established custom of the Farm, and that he had no right to it whatever. In fact he had not denied possession of the timber, resting his justification for taking it, under the terms of his Lease of the Timber Farm. But the Lease did not bear him out in this assertion, for in the opinion of the Court it only related to stray pieces found hidden in different parts of the River, but that the Farmer had no right to claim the whole of a float broken loose by accident, which it had been proved ought by old custom to be restored to the owners. Since Appellant had failed, though called on by the Court, to give an account of what he had taken, the statement of Respondent must alone regulate the amount of the decree, whereby the principal sum sued for, with Costs, was awarded to Respondent.

Decree 22d Sept. 1821.

Sudur Udalut, *Sitting Judge.* J. Romer, *Chief Judge.*

Appellant rested his claim to Appeal, on the grounds of the contradictions between the evidence given in this case, and that given by some of the same persons in the case which was decided in his favor, and of the want of any proof, on Respondent's part, of his actual loss.

The Sitting Judge thought the point of customary usage regarding drift timber had been sufficiently examined in the Zilla Court, and might be stated to be " that all timber recovered " before it reached the Khambolee Bundur, was to be given up " to the owner on payment by him of the expense of securing it, " and the Tizaee, and that all timber floating to the sea became " the property of the Government."—The Timber in question

came

came under the kind first described, but as the quantity of that saved, which really belonged to Respondent, had as yet nowhere been ascertained, the Sitting Judge considered a local investigation the only mode of coming at the facts still unproved, viz. The quantity of timber belonging to Respondent, and the quantity and value of that part of it which came into the hands of Appellant. The parties agreeing to settle these points by Punchayut, the case was laid over for its award.

The Award was, that Appellant should pay to Respondent the sum of Rupees 400, in full of all demands. Neither party having any objection to advance against this, the Sitting Judge referred the case to a competent Court that the Decree of the Zilla Court might be amended agreeably to this decision, giving his opinion that the Costs in both Courts should be equally divided between the parties, though the amount decreed was not above a fourth of the sum sued for, since Respondent was in the first instance driven to the necessity of having recourse to legal proceeding against Appellant, by the latter's wrongous seizure and detention of all the Respondent's timber when a part would have sufficed to answer the amount of the Salvage and customary Fees.

The Court concurring in this opinion passed a Decree to that effect.

Competent Court, J. Sutherland, *Second Judge.* E. Ironside, *Third Judge.* Decree 6th Feb. 1823.

N°. 52.

SUYUD UBDOOLLA MOOHUMMUD.....APPELLANT,

VERSUS

KUPOORCHUND NIHALCHUND DULLAL.....
and
SHER BHAEE YAR BHAEE SIPAHEE, } *RESPONDENTS.*

ON the 12th June 1821, John Morison Esquire, Collector of

Surat Udalut J. Kenlish, *Acting Judge.*

of Surat, laid an information before the Court of Udulat, of his having, upon information received by him, caused a seizure to be made on the 7th May, at the Custom House in the town of Rander, of nineteen Packages of Opium clandestinely imported into that place concealed in ten Bales of Cotton without payment of the Government duty, and of his having caused them to be conveyed to his Office, whereupon in conformity to the provisions of Regulations 1st of A.D. 1818 and 2d of A.D. 1820, "passed for the better regulating of the traffic in Opium," he now prayed the Court to place them under attachment. The Court immediately ordered the Nazir to place the Opium under attachment, to find out the owners, and take security for their appearance. Eighty four Maunds and a half of Opium were found on inspection, packed in Bags among the Bales of Cotton seized at Rander.

Dispute between informers for their respective shares of Reward upon discovery of smuggled Opium.

Appellant's claim to share with Respondents thrown out by the Sudur Udalut.

On the 18th June a notice was issued for the owners of the opium, who could not be discovered by any inquiries, to appear in Court and defend their title to the opium, and on their neglecting so to do, the Court, on the 21st July, brought on the cause, proceeding exparte upon the information laid by the Collector.

Appellant and Khojeh Meer, Ghoolam Moohummud, and a Mehta named Sheo Nurayun, all four persons of the employ of the Collector in the land Custom Department, and stationed at the Viriow Gate of Surat by him on that duty, together with Moonshee Hoossain-ood-Deen-Alee, the Talookadar, or Superintendent at the Rander Custom House, presented motions to the Court, laying claim respectively to the reward held out by Government to persons informing against the illicit transit of Opium. The Talookadar deposed that the Respondents came to him one Evening after sun set, bringing with them one Fureedoonjee Framjee Dullal, and informed him that opium had been discovered among some Bales of Cotton which that person was carrying into the city; that

on

on this information, witness set out with some sepoys and placed a guard for that night over the Cotton, which was near the Viriow Gate, and next morning shipped it in boats and sent it down to the Collector's office; he hoped for remuneration for this seizure, because he was kept up all night in the investigation, and actually assisted in trying some of the Bales of Cotton with the Siekh, or spike used for the purpose.

Oomrao Singh, Jumautdar of Peons, deposed that the Talookadar placed him with some Peons as a guard over the Cotton Bales at the Viriow Gate. The Sepoys who accompanied the Jumautdar, gave the same evidence. Bhana Jugdeesh, Seekhmar, or Government Searcher, was called up at the time of the seizure to examine the Cotton Bales, and now proved that opium was found in every one of them.

Respondent Sher Bhaee, called and examined on oath as a witness in the case, deposed that he was a Chokeedar on guard over the Viriow Gate, and that suspecting the Bales of Cotton contained opium, he applied the probe, and discovered the fraud, and then gave information to the Talookadar. When the probe struck the Bags, inside the Bales, Kuppoorchund, who was with them, said they only contained Oil Cakes, and began to put the Bags in again, and close up the Bales.

Respondent Kuppoorchund deposed likewise on oath that the Cotton Bales were found lying at the time near the Cotton Screws at Rander, (near which goods are generally shipped). He denied having endeavored to mislead Respondent Sher Bhaee by persuading him that what they found in the Bales contained only Oil Cakes, though he admitted having put the Bags into the Bales again, until information had been given. The other claimants for the reward, including Appellant, urged their having been present at the seizure, as grounds sufficient to entitle them to share in the reward.

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The Court observed that no proof had been made, within the period of ten days from the date of seizure, as prescribed by clause 1st Section 4th of Regulation 2d of 1820 that the opium in question had been duly imported, and that the duties on it had been duly paid, as was required according to the provisions of the Opium Regulations quoted by the Collector, and it was therefore decreed, under the authority of Regulation 2d of 1820, that the whole of the opium and Cotton so seized be forfeited, and the same was declared forfeited and confiscated, and two thirds of the same were by this Decree made over to the possession, and for the use of the United Company of Merchants of England trading to the East Indies, and the remaining third, both of the opium and Cotton so forfeited and confiscated, was made over to Respondents Kuppoorchund Nihalchund and Sher Bhaee Yar Bhaee, to be by them equally shared, in consideration of the information afforded by them and the seizure effected by their means.

Decree 18th August 1821.

FRIDAY, THE 28TH SEPTEMBER, 1821.

Sudur Udalut, Present, J. Elphinston, *Chief Judge.* J. Sutherland, *Third Judge.*

Read and Recorded a petition from Suyud Abdoo, and three others praying that the proceedings in a case of the seizure of some opium in which they were concerned might be sent for from the Acting Judge of Surat, and investigated by the Sudur Udalut, in order that a third share of the profits might be given to them as their due, in virtue of their being the seizers.

Ordered Copy of the petition to be forwarded to the Acting Judge of Surat, calling on him to certify to the Sudur Udalut the whole of the original proceedings in the case to which the petition related, and to stay execution of such part of the Decree as adjudged a third to the informers or seizers, until he should receive instructions from the Court on the subject, making his return on or before Monday.

FRIDAY, THE 5TH OCTOBER, 1821.

Present, J. Elphinston, *Chief Judge.* J. Sutherland, *Third Judge.*

Resumed consideration of the petition from Suyud Abdoo and three others recorded under date the 28th September 1821.

Read

Read and Recorded the Return by the Acting Judge of Surat, with accompaniments, to the Court's precept dated 28th of last month. The Acting Zilla Judge therein submitted, that the authority vested in the Zilla Court in this instance was of a special and summary nature, and he considered that as connected with the breach of a revenue law only, such award or decision ought to be held final and conclusive, and not subject to the ordinary rules for the cognizance and admission of regular Appeals. In support of this opinion, he handed up a correspondence between the Zilla Court, late Court of Appeal, and Sudur Udalut in Bombay, respecting the case of three persons praying to be admitted to sue in the Zilla Court in formâ pauperis. The Zillâ Judge rejected their prayer, first summarily, and again after investigation under precept from the Court of Appeal. That Court however declared the Petitioners not possessed of sufficient property to defray the expense of a Suit, but not feeling themselves empowered to direct the Zilla Judge to receive the Petition of the Plaintiff as Paupers, referred to the Sudur Udalut the question, whether the order by the Zilla Court, rejecting the suit if brought in formâ pauperis, was to be considered final? The Sudur Udalut held, that under the 5th clause of 5th Section of Regulation 1st of 1816, the power of refusing or admitting persons to sue in formâ pauperis, rested with the Court in which the suit was preferred, and as the Regulations authorized no Appeal therefrom, such decision must be considered final.

The Sudur Udalut having maturely deliberated upon the several points submitted by the Acting Judge for its consideration, in the above recorded return, was not aware of any clause in the Regulations which limited or restricted the usual right of Appeal, in a Revenue matter of this nature, where any of the parties interested in the seizure, might conceive themselves aggrieved by the Decree of a Zilla Judge.

The general principle which, according to the existing Regulations,

gulations, governed and controlled the right of Appeal to a higher Tribunal, from decisions passed by the lower Courts or their Officers, was that an Appeal shall not lie, where there had been a concurrent judgment of two or more Judges, in the matter at issue. Further, as without such concurrence, no decision could be considered final in this Country, it was manifest that the refusal to admit an Appeal from a decision passed by a Zilla Judge in such a case as the one under consideration, would have the effect of rendering that decision final, and that the general principle which is held to govern the right of Appeal, would be no longer maintained. There being no exception whatever made with regard to cases involving the breach of a Revenue Law, the Sudur Udalut was of opinion that the spirit of the Regulation for its guidance admitted of an Appeal in a case of this nature, in the same way that an Appeal would lie from a decision in any Suit regarding Land or Sayer Revenue, under the ordinary rules for the cognizance and admission of regular Appeals. The Sudur Udalut was uniformly actuated by a desire to uphold and support, when it could conscientiously do so, the orders and Decrees of the Zilla Court, but where there might appear, in any matter brought before it, a probable ground of a failure of justice, it then became necessary to exercise its general power of Supervision and Control, and under such circumstances, it would be called upon to interfere under the provisions of Section 32 Regulation 5th of 1820 which prescribed that "where no specific rules shall exist, the Sudur Uda-"lut shall act according to justice, equity, and good con-"science."

The Court was unable to admit the applicability to the present case of the precedent which had been brought forward by the Acting Judge, but had it been otherwise, the alteration which had since taken place in the Law would have rendered it perfectly competent for the Sudur Udalut to direct the admission of a pauper Appeal, under the provision contained in clause 1st Section 30th Regulation 5th 1820, whereby it is declared competent

competent for the Sudur Udalut " to receive a summary Appeal " from the orders or decree of the Zilla Court, in all cases in " which the latter may have refused to admit an original Suit, " or Appeal, regularly cognizable by them, or, having admitt- " ed such suit or Appeal, may have dismissed it without an in- " vestigation of the merits, on the ground of delay, informality, " or other default."

The Acting Judge was therefore directed to admit Syud Abdoo and the other petitioners to prefer an Appeal, if they should think fit, within the prescribed period, and under the usual conditions, from the decision passed by him, for such portion of the one third share of the forfeited Opium and Cotton awarded to Kuppoorchund Nihalchund and Sher Bhaee Yar Bhaee, as the petitioners might conceive themselves entitled to, staying execution of that part of the Decree only, which related to the abovementioned one third, but allowing the remaining part of the Decree, which adjudged the two thirds of the property to be forfeited and confiscated to the Honorable Company, to be forthwith executed in the terms of the Decree

Sudur Udalut, *Sitting Judge*, J. Romer, *Chief Judge*.

Appellant laid his Appeal against the above decision throwing out the claim of himself, and of all others except Respondents, to share in the reward specified for informers, on the plea that he was present at the seizure as well as Respondent Sher Bhaee, whilst Respondent Kuppoorchund was concerned in the attempt to smuggle, as the shipping Permits for the *Cotton Bales* were drawn out in his name, and he was a Servant of Framjee the owner.

Respondent Kuppoorchund in answer said he certainly was about to ship the goods, and went with the Searcher to have the Bales passed, when the discovery was made, and he went straight to the Talookadar and gave the information.

The Court from all the Proceedings in the suit was quite satisfied that there existed no grounds for interfering with the

Judgment

Decree 21st May 1822.

Judgment of the Zilla Court of Surat, which was therefore affirmed, all Costs being borne by Appellant.

No. 53.

NIHALCHUND JAEECHUND.....*APPELLANT*,

VERSUS

SHOOKUL SARA BHAEE UMBASHUNKUR..... } *RESPONDENT*.

Ahmudabad Udalut, C. Norris, *Register*.

ON the 25th June 1819, Appellant sued Respondent for Rupees 254-1-50, on account current. He said that Respondent and his Brother Lala Bhaee set up a House of business under their joint names of Lala Bhaee Sara Bhaee, with which Appellant's Father had a running account, balance in his favor Rupees 303-0-80 on the 2d Kartik Sood 1870 or 26th October 1813. To this debt of the house was further to be added amount of a Brokerage account Rupees 60-0-20, from A. S. 1865 till A. S. 1868. Total Rupees 363-1-0. Appellant came forward now to sue this partner for his halfshare, being Rupees 181-2-50, half the principal, and Rupees 72-3-0 interest upon this half, making the sum claimed from Respondent, whom Appellant sued singly, because he had already received the other half of the debt from Lal Bhaee.

Suit against one of two partners of a Firm for half the debt due by the Firm, half having been already paid by the other Partner. Decreed as sued for by the Register's Court, but its decision reversed by the Zilla Judge, and by the Sudur Udalut on the principle that the debts of a Firm must be recovered from the Firm alone. Vide Case No. 80.

Respondent pleaded that the suit was ill laid, because the transaction was with the Firm, and Lal Bhaee, as managing Partner, always did all the business, received and paid Cash, kept possession of all the accounts, and was alone capable of properly defending this cause, and moreover the Firm had failed.

Appellant again said that Respondent was present with Lal Bhaee when that person struck the Balance of account now sued for; he admitted that Lal Bhaee managed the business,

and

and that Respondent resided at Joonagurh. Both were strictly speaking liable by the Rules of Banking for the debt, but as Respondent had quarrelled with Lal Bhaee, that person only paid his half share, leaving him to recover the rest, as he was now doing, from Respondent alone.

Respondent in rejoinder positively denied that the Balance was struck by Lal Bhaee in his presence, or with his knowledge.

Respondent's Brother, Lal Bhaee Umbashunknr, was the only witness examined. He said that he and his Brother set up business with two under partners, in A. S. 1851, and that in 1864, he and his brother Respondent alone remained, and continued in partnership till A. S. 1870. They had two shops, one at Joonagurh in Respondent's name; the other here at Ahmudabad, under the names of both, and that Appellant's claims were against this house, the business of which witness conducted. He produced in Court the settlement which he had made with Appellant, and at the time of drawing up which Respondent was present.

The Court having examined the settlement, and received from Appellant, and Respondent, and Lal Bhaee, their respective Books of account, submitted them to merchants, and after their examination decreed, that Respondent must abide by the evidence of Lal Bhaee's Books, though differing with those of Respondent, as being those of the partnership; and they being in favor of the Appellant's claim, the sum sued for was decreed to him, with Costs, Respondent being told that he might sue the witness Lal Bhaee if he chose. Decreed 27th March 1820.

Respondent appealed against this decision, founding it on the same grounds as his defence, and taking objection to the accounts generally. Judge's Court in Appeal, W. A. Jones Judge.

The Court enquired of Appellant why he had not sued Lal Bhaee; he answered, as in his pleadings, that his account was in the joint names of Respondent and Lal Bhaee, and

as

as Lal Bhaee had paid the share due by him, he sued Respondent only.

The Court considered, that this suit being on a partnership account, it should have been laid against all the partners jointly. It was extremely irregular that a partnership account should be settled with one partner only, there being no particular share for which each was responsible, but the whole demand must be brought against the whole of the partners. A practise had prevailed of filing suits in this manner, but the Court was determined to put a stop to it, as it opened a door to fraud to any extent. Holding the payment by Lal Bhaee to have been paid by him, not as his share of the debt, but as on account of the whole debt due by the whole firm, it was decreed, that the Register's decree should be reversed, and the original suit dismissed as irregular. Appellant being informed that he was at liberty to recover by suing the whole firm.

Sudur Udalut, Special Appeal, *Sitting Judge.* J. Sutherland, *Second Judge.*

The Appeal was admitted for the purpose of fixing the point whether, as Appellant asserted, the Custom of the country warranted him in suing the one partner after settling with the other. The Sitting Judge considered it essential to fix the principle laid down by the Zilla Judge, as much mischief might be done by permitting the present practise. A person commencing dealings with a particular firm, did so at his own option, and the transactions must be with that firm throughout. He could not be allowed at will to molest individual partners for claims against the Firm, unless in case of an open and avowed separation of interests among the partners, or of any member incurring responsibility by his own act, which did not appear to have been the case in this instance.

The Sitting Judge was therefore for affirming the Zilla Judge's Decree, but as the case would form a precedent for future decisions, he submitted the case to the consideration of a Competent Court.

The

The Court, in concurring with the view taken by the second Judge of the principles which should govern the institution of Suits against Partners or Firms, thought it necessary to add, that the evidence of the partner admitted in this cause was that of an interested witness, and consequently not admissible. Respondent had directly charged him with collusion with the Appellant; his testimony might be intended to support such a collusion, and the possibility of the evil which must result from a practise was here quite evident.

Competent Court. J. Romer, *Chief Judge*, E. Ironside, *Third Judge*,

The decision of the Zilla Judge was supported on its own grounds, and the Appeal dismissed.

Decree 11th July 1822.

N°. 54.

Mt. SOORUJ, Daughter of DHURMCHUND APPELLANT,

VERSUS

MILAPCHUND HURUKCHUND.....RESPONDENT.

ON the 13th March 1821, Appellant filed a Petition in the Surat Zilla Court to recover possession of a house valued at Rupees 800, and mortgaged to Respondent, by her. Appellant said that the mortgage was made about 3 years ago, for Rupees 525, of which she had received Rupees 300, with a note for Rupees 100 more, but the rest was not yet paid though often demanded, and in consequence she wished to redeem her house; and being particularly distressed by Respondent's refusal, having borrowed the sum at a high interest from other persons to repay it to the mortgagee, she prayed the Court to cause Respondent to restore her house, and relieve her from her distress.

Surat Udalut J. Vibart. *Register.*

Claim by Appellant to the right of redemption of a house mortgaged by her to Respondent. Disallowed by the Zilla Court but decreed in Appellant's favor by the Sudur Udalut.

It was pleaded in defence that the house was attached about five years before at the Suit of a Creditor of Appellant's husband, and

and Respondent bought it with his own money, in the name of another person, at the sale, which proved the claim respecting a mortgage of three years standing to be false.

Appellant denied this, declaring that she herself bought in the house in the name of one Jugjeevun Mukundas since dead, but she had a writing of his to prove what she said. Respondent in rejoinder referred to the Suit he had gained against Jugjeevun, to prove that what Appellant said was not true.

Appellant produced two papers.

The first, a Farighkhut, dated Wednesday 11th Chytur Vud A. S. 1872 or 23d April 1816, passed by Jugjeevundas Mukundas to Appellant "as an acquittance to her for Rupees 581 being "the sale proceeds of her house, declaring he had a claim upon "her now only for the balance Rupees 13 2 0 and for which "she had passed him a new note."

The other was that alluded to in the Plaint, passed to Appellant on Friday 7th Jesht Sood A. S. 1874, or 11th June 1818 by Respondent for Rupees 100, to be paid in a month, or interest at 6 per cent per annum to commence in default of payment within that time.

Respondent on his part delivered, copy of Decree in Suit No. 538 of 1819, passed on the 16th March 1819 in the Umeen's Court on the suit of Jugjeevun Mukundas, filed to recover from Respondent, Rupees 44, "due to Jugjeevun as his profit "upon the transfer to Respondent of the house bought in by "him at the public sale," which suit the Umeen dismissed on the grounds of a Farighkhut passed to Respondent by Jugjeevun, and an inspection of the Decree, in execution of which the house was sold.

Copy of a Decree since passed by the Assistant Register's Court in Respondent's favor on the 20th December 1820, on a suit No. 2186 of 1820, filed by him to recover damages from

one

one Juohur Bhaee, tenant of the house adjoining this now in dispute, for having opened a door in the wall on the third story and committed other trespass, by which Decree in his favor, Respondent urged, his title to the house now claimed was fully established.

The Bill of sale of the house shewed that it was situated in Roopchund Poput's street in the Gopeepoora, belonged originally to Appellant and was put up for sale on the 22d January 1816, in execution of a Decree obtained against her by one Jugjeevundas Khooshal, and was knocked down to Jugjeevun Mukundas for Rupees 581.

A Farighkhut, next produced by Respondent, shewed that by this Deed, which was dated 6th Shaban A. H. 1233, or 11th June 1818, and registered in the Udalut on the 24th, Jugjeevun resigned all claim to the house, bought by him at the sale of it by the Udalut, with its appurtenances, in favor of Respondent, in consequence of his having only purchased it in his own name, but with funds furnished by Respondent, and on his account, when sold in execution of the Decree which he had obtained against the owner, Appellant. Respondent was to give Jugjeevun Rupees 41 as profit upon the transfer of the house to him.

The Court observed that this Farighkhut was proved valid by the two foregoing Decrees of the Assistant Register's and Umeen's Court. Appellant pleaded total ignorance of all these papers, and referred the Court to the Farighkhut passed to her by Jugjeevun for all but Rupees 13-2-0 to prove that the latter person had no claim whatever upon her house, and could not therefore dispose of it to Respondent. She was then asked why she remained silent when Jugjeevun sued Respondent for Rupees 44 as his commission for purchasing the house for Respondent at the public Sale, and when the latter again sued Juohur Bhaee for damages. Appellant still pleaded ignorance of all these transactions. The Court did not conceive it necessary to take the evidence of the witness called by Appellant, for it could not be

supposed

supposed that if she had a claim on the house, she would have allowed the different suits regarding it to have passed through the Courts without notice, nor would she have allowed Respondent to repair the house on his own account, and upon this view of the case, Appellant was nonsuited with Costs.

Decree 6th Nov. 1821.

Sudur Udalut, *Sitting Judge.* J. Sutherland, *Second Judge.*

From the petition of Appeal it appeared, that one of Appellant's relations was endeavoring to get possession of the house as next Heir, and in order to defeat his schemes, it was contrived between Appellant and a Wukeel named Mijlis Raee, that Jugjeevun should sue Appellant and get a Decree against her, for which the house was to be sold in execution, and Jugjeevun was to buy it in his own name, which he did, but passed to Appellant the note she had exhibited in the lower Court, in order to secure her right.

Respondent took advantage of this admission, to shew how little faith was to be placed in the declaration of one who had acted such a part.

Appellant prayed the Court to admit all the witnesses whom she had named in the Zilla Court.

The Sitting Judge was inclined to afford Appellant an opportunity of proving the transfer of the property to her by Jugjeevun the purchaser, and the subsequent mortgage of the premises to Respondent, and therefore summoned Appellant's witnesses.

Pandoorung Runchhor, the officer employed by the Udalut to conduct sales &c. under orders in execution, appeared and deposed to Appellant having directed Jugjeevun in his presence, to buy the house in for her at the sale. He could not say whether Jugjeevun was to get any thing for his trouble, nor whether he gave up the house to Appellant.

Mujlis Raee Baboo Raee, Wukeel of the Udalut, spoke to his having heard both Appellant and Jugjeevun say that the latter bought in the house for Appellant, who agreed to give him Rupees

pees 25 for his trouble. That she accordingly gave him Rupees 12-2-0 and passed him a note for Rupees 12-2-0 the balance.

Mookoond Bhaeechund, the person through whom Appellant paid to Jugjeevun Rupees 16 the amount of his note and its interest, for which Jugjeevun had sued her, proved the payment, and deposed that the latter then told him it was profit for a house which he had bought in for her.

Appellant put in the note, which she had passed to Jugjeevun for Rupees 12-2-0 on the 24th Jumadee ool Uvvul A. H. or 23d April 1816 "as a sum borrowed from him," to be repaid in three months, or bear the usual interest. A Receipt for the amount was signed on the back.

The Court conceived it necessary to call for the proceedings of the Suit instituted by Jugjeevun for recovery of the amount of this note, in order to ascertain from an early and authentic record, the part acted by him respecting the house. It was found that on the 16th June 1818 he filed his Plaint purporting to be brought "for the principal and interest of a note under the seal "of Mooftee Nizam ood Deen." It was withdrawn by Ruzeenamu on the 24th of the same month.

The note exhibited by Appellant in the lower Court as from Jugjeevun, was fully proved by the subscribing witnesses, as was delivery of Rupees 12-2-0 on the spot to Jugjeevun.

The note passed by Respondent to Appellant for Rupees 100 in part payment of the sum to be advanced on the mortgage was signed by only one witness, named Ruttunchund Manukchund, who said Respondent engaged Jugjeevun to buy in the house for him, and gave him the money to do so, but Jugjeevun refused to surrender it, when bought, because he had not received the commission agreed on, so that Respondent did not get the house for two years. Witness did not see Respondent pay the money, but saw him go away with Jugjeevun to another place to get it. He totally denied having witnessed the

note.

note. This person was also a subscribing witness to the Farigh khut from Jugjeevun to Respondent, and deposed to its having been duly executed by Jugjeevun, denying ever to have heard of the mortgage of the same house to Respondent by Appellant.

Ruttunchund Dhoollubhchund, deposed to the house having remained shut under the Key of Appellant until two years after the Sale, when she mortgaged it to Respondent, making over to him the Bill of sale, as a Title Deed, and the Key of the house in presence of witness, his wife, and one Khoobchund Moolchund, his Goomashta. He spoke also to a dispute raised by Appellant when Respondent commenced making repairs himself. He added that the former witness, Ruttunchund, was Respondent's partner and was present when the mortgage was made, as he was living with witness, in whose house it took place. This statement was corroborated by Khooobchund.

Sooruj Baee, wife of Ruttunchund Dhoolubh, fully corroborated her husband's statement, adding that at Respondent's own request, the Bill of sale and key were given by Appellant through her hands to Respondent, who refused to receive them from Appellant, because a widow. Witness said that Rupees 150 were paid in her presence to Appellant, with money supplied by Ruttunchund Manikchund, who brought it from his room up stairs.

Appellant then proved, by three witnesses, that she lived in the house from the time of the Sale, when Jugjeevun gave it up to her, until she resigned it under the mortgage to Respondent.

From the whole of these preceedings the Court found, that Appellant's house was sold on the 22d January 1816 in execution of a Decree, and purchased by Jugjeevun Mukundas, who on the 24th March surrendered it to Appellant for a small consideration, half of which was paid at the time and a Bond executed for the remainder on the same day. On the 16th June 1818 he sued for the amount of this Bond, but withdrew his suit on the 24th on receipt of the amount from Appellant, who on the 25th mort-

gaged

gaged the house to Pespondent, putting him in possession of the Receipt, or Bill of sale, as a Title Deed. That Respondent and Jugjeevun entered into collusion to cheat Appellant, an unprotected female, out of her property, by a formal Deed of Release passed by Jugjeevun to Respondent, and registered on the very day that Jugjeevun filed his Razeenama in his suit with Appellant, by which Deed of Release Respondent came ostensibly to be actual proprietor. To give a greater color to this transaction, Jugjeevun sued Respondent at the commencement of A. D. 1819, to recover the commission or profit the latter had agreed to pay for transfer of the house to him, which claim was thrown out on production by Respondent of the Udalut Receipt, and the Farighkhut was thrown out. The Court held that the Decree obtained by Respondent against Juohur Baee, did not strengthen his claim, as he acted under a supposition that he had secured the proprietory right to himself. It was evident that Appellant lay at the mercy of the parties concerned in this swindling act, and the Sitting Judge referred the case, for reversal of the lower Court's Decree, to a competent Court, recording his opinion, that Appellant should be put in full and complete possession of the house sued for, but having to account to Respondent for the advances he had made to her on the mortgage, or intended mortgage, the Zilla Court being authorized to receive whatever deposit she might make on that account, to save her from future Costs of Suit, if an amicable adjustment could not be effected.

Competant Court.
J. Romer, Chief Judge.
E. Ironside, *Third Judge.*

The Court fully agreed in the view taken by the second Judge, both of the facts and arguments in the cause, and the Decree of the lower Court was reversed in the manner proposed by the second Judge, it being expressly provided, that in the event of Respondent refusing or neglecting to receive any sum or sums of money so tendered to him by Appellant, the payment of such sum or sums into the Zilla Court by Appellant, should bear her clear, "pro tanto" of any Costs that might accrue on any suit laid

Decree 11th July 1822.

laid against her by the Respondent to recover such money. Costs in both Courts, Rupees 260, to be borne by Respondent.

No. 55

HURGOVIND NUTHOO.....*APPELLANT.*

VERSUS

ISHWUR KOOBER.....*RESPONDENT.*

Ahmedabad Udalut, D. Greenhill, Register.

RESPONDENT sued Appellant, under date 20th December 1819, to recover from him the sum of Rupees 640, being the Balance, of one Bond for Rupees 901, given to him by Appellant on the 2d Kartik Sood A. S. 1874, or 10th November 1817, on account of former dealings between them, and of another, dated the 2d Kartik Sood A. S. 1875, or 31st October 1818, passed to him by Appellant for the amount of the former one increased by interest. A dispute arose between the parties since that time, Respondent accusing Appellant of having torn up the Bond, and they named a Punchayut, the members of which got Respondent to pass a Farighkhut for Rupees 300 only. Respondent's object in the present Action therefore was to recover the balance, not awarded, with interest on it.

Farighkhuts or Releases held to be valid when written on unstamped paper.

Appellant rested his defence on the Release, and exhibited it in the suit, but the Court held it to be invalid and void, as not being written on stamped paper. The parties then joined issue upon the disputed accounts, and Respondent produced certain proceedings on the Criminal side, held on an information by Respondent, that a Deed of Partnership between these parties in a shop at Kurree, under which the Punchayut had allowed Appellant deduction for Rupees 619, was a forgery. The information was quashed, and the parties directed to proceed by a Civil action, which advice Respondent followed by filing the present suit.

Appellant,

Appellant, as Defendant in the Zilla Court, called ten witnesses to prove the admission by Respondent before the Punchayut, of the justness of the claim of offsett for which they had allowed Appellant deduction, viz. the amount of the partnership at Kurree; but as the testimony of the first one examined was suspicious and contradictory, and rather in favor of Respondent, it was thought unnecessary to take that of the others, particularly as the claim of Respondent was admitted to be correct, the deduction allowed to Appellant by the Punchayut being only for an offsett, and because, if the rest coincided with this witness, the Court was in possession of their testimony; if they differed from him, one or other would have committed perjury.

The Court therefore considering that Appellant had not made good his claim to deduction or offsett, decreed to Respondent the sum sued for, being the balance acknowledged by Appellant to be due, the demand set up by him being excluded as not proved. Costs were to be borne by Appellant.

Decree 28th Nov. 1824.

The Court remarked, with respect to Appellant's chief ground of defence in this Action, the Release passed to him by Respondent, that it had been ruled by the late Provincial Court of Appeal that Releases do not come under the description of Papers which, by Section 13th of Regulation 14th of 1825, require to be written upon stamped Paper, and the reasons assigned by the Register for not hearing the witnesses summoned by Appellant on his behalf, were unsatisfactory, and if admitted, would have the effect of destroying all evidence resting upon the testimony of more than one witness. It was therefore ordered, that Appellant should be allowed to exhibit and prove the Farighkhut or Release, and that the evidence of his remaining witnesses should be taken and forwarded to the Sudur Udalut.

Sudur Udalut.—Sitting Judge.—J. Romer, Chief Judge.

From the evidence taken by the Zilla Court it was clear that the Farighkhut passed by Respondent related only to the general

general concerns between the parties at Ahmudabad, and that Respondent's agreeing to the offsett of Rupees 619 on Account of the partnership at Kurree was entirely conditional, being made to depend upon Appellant's bringing satisfactory Accounts in support of it. For even by the testimony of the first witness formerly examined, the Punchayut did not finally settle this point, but left the matter still in dispute between the parties, for he said the loss on the Kurree business was to be proved, not that it had been proved. On these grounds the Decree of the first Register of Ahmudabad was affirmed against Appellant, with full Costs, and interest at 12 per Cent on the sum adjudged, until full execution of this final Decree.

Decree 26th Nov. 1822.

No. 56.

Mr. SHEO BAEE, daughter of MUNCHHARAM and Widow of SURVANUND HURANUND..... } *Appellant,*

VERSUS

GOWREENUND HURANUND; TRIMBUKANUND, and MUHESHWURANUND, Sons of ISHWURANUND; and Mr. BIJLEE, Widow of HURANUND, } *Respondents.*

Surat Udalut, J. Kentish, *First Register.*

APPELLANT sued Respondents, Heirs of Huranund, on the 23d January 1821, to recover from them Rupees 800, amount due to her as part of the share belonging to her late husband Survanund, of his Father Huranund's property.

Claim by Appellant, a widow, against the Brother and nephews of her late husband for his share of the Family Estate. Separation of the Appellant's husband, and acquit.

Huranund, the Head of the Family, died leaving a Widow, Respondent Bijlee, and three Sons, Ishwuranund, Survanund, and Gowreenund. The two eldest died, the first leaving two Sons, Trimbukanund and Muheshwuranund, the second leaving a Widow, Appellant, and two Sons. About three years ago, the Respondents, Gowreenund and the Heirs of the other

other Brother, called upon Survanund, because of the precarious state of his health, to make a division of the family property. Survanund agreed to do so, and a Farighkhut was drawn out, and Survanund being carried to the Mooftee in a Cart by Respondents, there saw it executed, and afterwards registered in the Udalut, after which it was deposited with a third person. Appellant in admitting this, said Survanund represented to Respondents at the time, his helpless state, and the unsoundness of his mind and faculties, and she added, that out of Huranund's property, valued by her at Rupees 15,300, they had only given her an old ruined house to live in, and that she had been obliged to maintain herself, her husband, and her children, for three years by pawning her ornaments. Respondents then had offered her Rupees 400, but she refused to take so small a sum, out of the large property left by Huranund, as above stated, since it would not even be sufficient to marry her children. Respondents on receiving this refusal had deposited the money with Muyaram Umbaram, one of their neighbours, desiring him to prevail on her to accept it. Respondents took advantage of Appellant's absence at her Father's one day, to carry off Survanund, who was quite helpless, to their own house, where they kept him some time, and were again carrying him to Bhutlaee, a holy place on the Tappee, when he died on the road, and they performed his funeral, without giving any notice to Appellant. She however contrived to perform the funeral ceremonies, and now brought this action for Rupees 800, and no more, because she could not purchase stamped paper for a higher amount, but she declared her total claim to be for Rupees 3,825, the one fourth share to which her late husband was entitled, out of the property left by his Father Huranund, and for the balance of which she would hereafter sue. The Farighkhut, she pleaded was unexecuted, and incomplete, being still in deposit in the hands of a third person.

tance, pleaded against the claim and proved to the Court's satisfaction, but the balance of the share of the deceased, by him deposited with another person, decreed to be paid to Appellant by Respondents. Sudur Udalut reversed so much of the Decree as went against Respondents.

Respondents rested their defence wholly and solely on this Farighkhut, urging that Appellant's husband lived four years after

after execution of it, without preferring any claim, and that what Appellant had advanced was totally unfounded.

Appellant urged against this that the Farighkhut was fraudulently obtained from a man not in his sound senses, and could not be called a valid acquittance, more particularly since the share fixed in it had not been received. The Farighkhut, which was dated 5th Shuwal A. H. 1232, or 19th August 1819, bore the Moofiee's Seal, and was registered on the 30th August 1817, "passed by Survanund Huranund in the full possession "of his sense and faculties, and with his own free Will," setting forth that the property left by his father belonged, one fourth to himself, one fourth to Respondent Gowreenund, one fourth to Respondents, the sons of Ishwuranund jointly, and the remaining fourth to Respondent Bijlee, widow of Huranund. He declared that his share of this amounted to Rupees 400, being Rupees 300 in exchange for his share of the family house, and Rupees 101 of the ornaments, household furniture &c. &c. This sum he acknowledged to have received, and declared himself absolved in future from the liability of maintaining his mother Bijlee, whom Respondent Gowreenund was to support in consideration of having received the houses, and real property, upon which, and upon all the rest of the family property, Survanund by this Deed acknowledged himself to have no further claim whatever.

Appellant called one Wishwunath, to prove that the Farighkhut was deposited with him by Survanund as unexecuted and unfinished. The witness however positively denied receipt of it, or that his mother had received any paper of the kind during his absence.

Appellant then called two persons one of whom Oodeshunkur, positively swore, that Wishwunath's mother Sheo told him her Son had the Farighkhut in his keeping, and he afterwards heard it read by Ramshunkur who said that Respondent Bijlee came with another person, with the Farighkhut in her hand, out of Wishwunath's house, and gave it to witness, who was sitting

with

with Oodeshunkur, to read it to her. Both witnesses agreed that the Deed bore a Seal.

Muyaram, before mentioned by Appellant, being called up, deposed to Respondent Gowreenund having given to him Rupees 300 as the amount of the Farighkhut still unpaid to Survanund, who being about to die, Respondent was anxious to have it paid to a third person, being afraid that Appellant would spend it, and then come with her family on his hands. Witness received the money, and two days after offered it to Appellant, who refused to receive any but the full amount specified in the Deed, Rupees 401; so witness returned the money to Respondent.

The Court then desired Respondents to prove that the Farighkhut, which Appellant had tried to shew was still unfinished, was duly executed. This was fully established by two witnesses, who stated all the points settled at the division, the arrangement of the Yujmans, or disciples, the possession of the family Books of the Shastr, the division of the ornaments, utensils &c. and proved the execution of the Farighkhut in presence of the Mooftee, and the Registry of it afterwards in the Udalut. One of them, Roopshunkur Shunkurjee, added that the Rupees 300 was lodged with him in deposit by Survanund and was still in his hands. From the evidence of the other person, Bhuwaneeshunkur, there appeared to be two Turs or Schisms in the Cast of the parties, who are Nagur Brahmuns, that of the Burnugur and the Vee-anugur; the Burnugur Tur is subdivided into two more, the greater and the less, to the last of which Appellant's Father belonged, and her husband Survanund seceded from his own to it on his marriage with Appellant, whilst his family all belonged to the other.

Anundram Gowreeshunkur produced the will of Survanund, who deposited it with witness, the reason given by him for keeping it so long was that he had no injunction to give it to any one. In the Will, which was dated Tuesday 14th Shravun Vud A. S.

1876 or 6th September 1820, the Testator valued his Father's Estate at Rupees 2,400, which was kept joint between the brothers for about three years, till his own extravagance made his Brothers wish to separate from him, and a division was effected. The Testator had made a little money at one time, and his Brothers had also, besides what their father left them, and after deducting the house expenses, and what the Testator had squandered away, and some debts he had incurred, they divided the remainder, and gave him, as his share, Rupees 301, the value of a house, and Rupees 100 for the other effects, which sum he had acknowledged to have received and delivered to his Nephew Vinaik Rughoonath, and passed the Farighkhut to his Brothers. Part of this being now spent, he recovered the balance, Rupees 301, through Muyaram, and gave it to Roopshunkur, the Brother of Respondent Bijlee, who was in this Will enjoined to give it to his children, to be expended partly on his funeral expenses. Finally, the Testator declared himself and them not in any way liable for the maintenance of his Mother Bijlee, whom the other Brothers had taken charge of.

The witnesses to the Will, and also Vinaik Rughoonath fully proved it, and corroborated the statement respecting the amount of property, and the Farighkhut. Vinaik also produced a Receipt from Survanund for the money repaid to him.

The Court found from all the circumstances of the case, and the admission of Appellant, that her husband Survanund executed and passed a Deed of Release to Respondent Gowreenund, for the sum of Rupees 401, out of which Rupees 100 were expended during Survanund's life time, and the residue, or balance Rupees 301, were now lodged in deposit with Roopshunkur, the Uncle of the deceased by the Mother's side; and the evidence produced by Appellant herself shewed that she was willing to take and receive the sum of four hundred Rupees. Whereupon it was decreed that Respon-

dents

dents should pay to Appellant the amount deposit of Rupees 300, and the claim of Appellant to participate in, and share the Estate belonging to the Father of the deceased, was, in consideration of the execution of the Deed of Release, and the Will executed by the Appellant's late husband Survanund, declared to be null and void, and was disallowed, Appellant being ordered to pay Costs.

Decree 9th January 1822.

The Appellant urged in her pleadings before the Sudur Udalut that the Farighkhut, though duly executed, was void because never acted upon and still in deposit, and that the Will, and the Receipt produced by Vinaik were spurious documents, for discovering which she prayed the Court to examine and compare the signatures of them with that of the Farighkhut, and to refer to the Books of the Collector's Stamp Office, when it would be found that the stamps on which they were written were not purchased by or in the name of her husband. The Sitting Judge, with the Assistance of the Shastree of the Court, carefully examined and compared the signatures on the three Deeds, and found them so alike as to warrant the conclusion that they were written by one and the same person. He saw no necessity for referring to the Collector's Books, as nothing of advantage to the cause could be derived from such a procedure. Upon the case, as before the Court, the Sitting Judge was of opinion, that Appellant had established no claim to any further share of Huranund's Estate, beyond what was settled and agreed on in the Farighkhut, and which it was clearly proved by the Will and the witnesses had been paid over to Survanund long previous to his death. The Decree of the lower Court however could not be affirmed, as so far from the sum of Rupees 300 decreed to Appellant from Respondents being in deposit with them, it was established and admitted, that it was received from them by Appellant's husband, and by him made over to the witness Roopshunkur, who admitted the money still to be in his possession. The case was therefore referred to a Competent Court, for the purpose of having the First Register's Decree reversed.

Sudur Udalut, *Sitting Judge*. E. Ironside, *Third Judge*.

The

Competent Court, J. Sutherland, *Second Judge.* T. Barnard, *Fourth Judge.*

The Sudur Udalut, considering Respondents exonerated as heirs from all claim by Appellant, on the Estate of the late Huranund, determined to reverse so much of the decision passed by the First Register to the Surat Court, as awarded any sum of money to be paid by Respondents, and the Sudur Udalut ordered Appellant to bear all Costs, leaving her to obtain from Roopshunkur Shunkurjee, the Amount in deposit with him, in any way she thought proper.

Decree 1st August 1822.

N°. 57.

SUHOORAB SHAH BEZUNJEE.....APPELLANT,

VERSUS

HURJEEVUNDAS HURKISHUNDAS.....RESPONDENT.

Surat Udalut, *J. Kentish, First Register.*

RESPONDENT filed his Suit on the 13th February 1821, against Appellant, and one Khoorshedjee Jumshedjee, to recover from them the sum of Rupees 700, on account of two Bales of Buhrampats entrusted to Khoorshedjee Jemshedjee, for sale, on the responsibility and security of Appellant.

A person guaranteeing to a merchant a safe return for Goods entrusted to a supercargo for sale at a Foreign Port, and executing an Instrument to that effect for a Premium of two per Cent, held liable to make good such engagement, the Instrument being declared valid though written on unstamped Paper, and proved by indirect evidence.

It appeared by the plaint, that Appellant came to Respondent, who is a Merchant, and introduced Khoorshedjee to him as his Uncle about to make a voyage to Mozambique, and ready to take any goods to sell there for Respondent for a Commission of Rupees 4 per Cent, and Appellant further added that he would insure a just return of the proceeds by Khoorshedjee for Rupees 2 per Cent more, to be paid to himself. Respondent signed a Bond to them for this per Centage, and gave into their charge the two Bales, containing altogether 12 Kodees of 20 Pieces each, or 240 pieces of Buhrampats, valued at Rupees 850, which were shipped on the Illustre Almeide, in which Ship Khoorshedjee made the voyage to Mozambique and back

back again. In A. S. 1874 Appellant gave him, in part payment of the Proceeds, two pieces of Elephants' Tusks, worth about Rupees 150, but he could get no more from him, and prayed the assistance of the Court for recovery of the balance.

Notice was issued for the appearance also of Khoorshedjee, to defend the suit with Appellant, but he neglected to attend, and the suit proceeded, as regarded him, exparte.

Appellant in answer to the claim, as against himself under the guarantee, distinctly denied that he had ever given Respondent any Bond, or engagement to stand security for Khoorshedjee in the manner stated, and he then proceeded to state, as what he had learnt from Khoorshedjee, that the latter returning from Mozambique in A. S. 1874, put into Dumaun, from whence he wrote to Respondent, and again on his arrival at Surat, told him personally, that of the two Bales shipped on the Illustre Almeide, the Captain, Constantine Philippe Rodrigues, on their arrival at Mozambique had given him one, but would not surrender the other, and Khoorshedjee then told Respondent that he was ready to account for the Bale which he had received, but referred him to the Captain for an account of the other, and thus the matter stood at present. Appellant stated that Khoorshedjee to his knowledge had charge of 22 Bales in all for different persons of Surat, and that all had been duly accounted for, except this one Bale of Respondent's.

Respondent observed it was a most extraordinary thing that his goods alone should have gone in this singular way, and that from a vessel constantly making the same trips under the same Captain, and a man of respectability; he added that when Respondent was shipping his goods, Appellant agreed to take the two Bales, and Respondent paid the Duties for them himself to Appellant.

As Appellant declined calling any witnesses or producing any documents, the Court called on Respondent to proceed with his proof.

Appellant

Appellant had represented by a motion to the Court in an early stage of the proceedings, the necessity for calling on Respondent for immediate production of any note or Bond he might have as the foundation for his claim, and Respondent accordingly filed it in Court. It was written on unstamped Paper and without witnesses, to the following effect. Sunday the 4th Posh Vud A. S. 1874 or 26th January 1818. I, Parsee Suhoorab Shah Bezunjee, write to you Harjeevundas Hurkishundas, that "you have shipped two Bales of Buhrampats for Moosumbeh under the care of Khoorshedjee Jumshedjee, to be by him sold there. He is my Uncle, and I engage that he shall bring back the Sale Proceeds, and honestly account for them, and as it is under my guaranfee, (Zimma) I will faithfully pay the money, provided the vessel return in safety. For this I am to receive 2 per cent on the amount, witness my hand.

An Extract from Respondent's Books for the 1st Vyshah Sood A. S. 1874, shewed a payment of Rupees 45 to Appellant "through Jumshedjee," on account Duties on two Bales of Goods at Dumaun.

The fact of Appellant's coming to Respondent and agreeing to become responsible for his Uncle, when Respondent objected to advance any goods to the latter because ignorant of his character, was proved by three witnesses, who deposed also to Appellant's having passed a note to Respondent, whilst one of them thought the one exhibited was not that given by Appellant, and another was sitting at a distance at the time. Two of them were Goomashtas of Respondent, one of them, named Jumshedjee, being the person who paid the money for Duties to Appellant.

It appeared from the Books of Lukmeechund Veerchund, that on Monday 5th Posh Vud 1874 the two Bales were delivered to Appellant at Dumaun by the house of Hureechund Raeekurn, to whom the former Firm had consigned them, with other goods on board the Lahsuwaee. Brijbhookundas Veerchund,

chund, of that Firm, and the owner of the vessel, attended and produced a Receipt from Appellant to the Tindal, in witness's name, for sundry goods shipped by him for Dumaun and safely landed there; the two Bales in question were therein specified as belonging to Respondent, and the Tindal verified the Receipt.

Brijbhookundas being again examined, said the two Bales were at Respondent's desire entered in the Books as delivered to Appellant, adding that it was usual for the shippers to enter the goods.

An extract from the Books of Nihalchund Hureeshah, attested by a Goomashta of that house, shewed a sale of three Bales of Goods to Respondent, containing 1,992 Pieces on the 26th January 1818.

The Court observed that no proof had been adduced as to the value and market price of the Bales, and Respondent then gave in the names of Hurgovind Chutrubhooj, and Pranwullubh Gopaldas, two merchants, to decide the value of the goods.

From what they stated, the price of white Dhotrus of Jumboosur manufacture, between 5th Asvin Vud 1873 and 5th Margsur Sood 1874, was 40 or 41 Rupees per Kodee of 20 pieces, and Black ditto, from 50 to 57 Rupees in the same time.

An extract from the Books of a third person, shewed the same price.

Since Khoorshedjee was not present to defend the Suit, Respondent was allowed to make affidavit of the truth of his claim against him. The Register was of opinion that proof had been adduced of Appellant Suhoorab Shah Bezunjee having written and passed the Security Bond, thereby making himself liable and responsible to Respondent, for the two Bales of Buhrampats, which were proved, from the Tindal's receipt and the Extracts from the Books, to have been received by Appellant; and it was further proved that he had made over a quantity of Ivory

in

in part payment. As the value of the Bales as sued for by Respondent, did not tally with the price stated in evidence, the Court took it at Rupees 57 per Kodee, agreeably to which the price of the 12 Kodees sued for would be Rupees 684, from which deducting Rupees 150 value of Ivory received, left a Balance due to Respondent of Rupees 534, and this sum, with Rupees 217 interest from the date of delivery to that of the decree, together with Rupees 78 for Customs, and Duties paid at Dumaun and Surat, made a total of Rupees 829-2-60, which was decreed to Respondent with full Costs from Appellant, reserving to the latter the privilege of recovery by Suit from Khoorshedjee Jumshedjee.

Decree 30th Nov. 1821.

Sudur Udalut, *Sitting Judge.* J. Romer, *Chief Judge.*

The Court observed that the evidence was not without some contradictory allegations respecting the manner in which the paper of agreement was passed by Appellant. It was called a Security Bond in the lower Court, and certainly partook much of the nature of such an instrument. Respondent seemed to have trusted more to Appellant's honesty than to having clear and substantial proofs of the transaction, but considering the whole of the proceedings, the Sitting Judge was inclined to believe it a bona fide transaction, and that the paper was sufficiently proved, and was valid without a Stamp, because it did not come under the description of any document required by the Regulations to be written on Stamped paper, approaching in its kind to something of a Respondentia Bond or Special Contract.

The Sitting Judge was thus of opinion that the decision should be affirmed, but as the case was not without difficulty deemed it expedient to refer the ultimate decision to a full Court.

Competent Court, J. Sutherland, *Second Judge.* E. Ironside, *Third Judge.* Decree 27th June 1822.

The Court concurring in the view taken of the case by the Chief Judge determined to affirm the Register's decision with Costs against Appellant.

N°. 58.

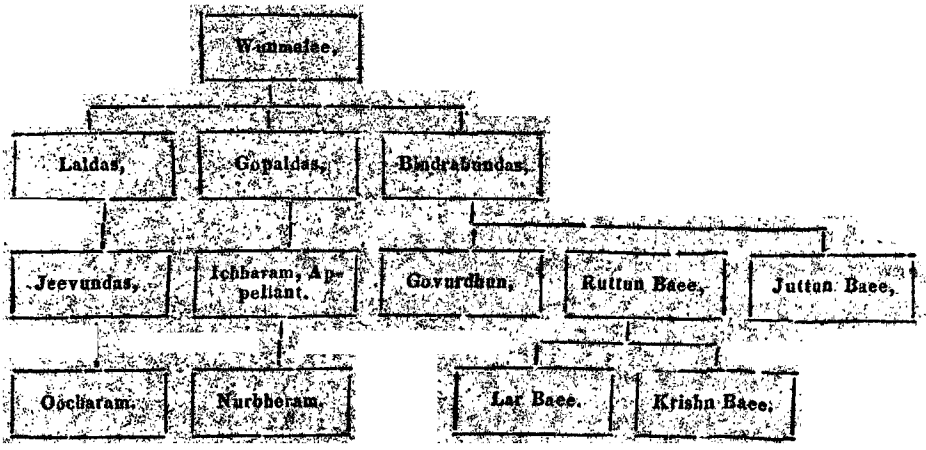
ICHHARAM GOPAL.....*APPELLANT*,

VERSUS.

LAR BAEE, ALIAS GOWREE BAEE; and KRISHN BAEE; Grand-Daughters of Bindrabundas.....} *RESPONDENTS.*

Surat Udalut, Ed. Grant, Register to the *Sudur Udalut.*

ON the 10th August 1819 Respondents filed a Suit against Appellant, their second Cousin, in the amount of Rupees 800 to recover from him a house, some Wuzeefa land, and household Articles, property left by their Maternal Grandfather.



Claim by two women against their mother's first cousin on the father's side, for their maternal Grandfather's share of the family Estate.

Separation between the Brother, Appellant's Father and Respondent's maternal Grandfather, not proved, and Respondent's right to share disallowed, but possession awarded them of a House sold to their maternal Grandfather by his Brother.

Sudur Udalut reversed so much of the Zilla Decree as awarded the House to Respondents.

Their Grandfather Bindrabundas, and Gopaldas, were Brothers. The former had two Daughters Juttun and Ruttun Baees, and a son Govurdhun, who afterwards died. Gopal had two Sons, Appellant Ichharam and Nurbheram. In A. H. 1202 or A. D. 1787, Gopaldas sold to his Brother a house which he had bought with his own funds, delivering up at the same time his original Deed of Sale, drawn in the name of Respondents. The two Brothers also bought conjointly 50 Beeghas of Wuzeefa land in the village of Dindowlee in the Chowraisee Purgunna, and not long after Bindrabun died, and his two daughters Juttun and Ruttn Baees obtained possession of the Wuzeefa. Mt. Ruttun died about 20 years ago, leaving two Daughters

Daughters Respondents, by her husband Keshoordas. The Surviving Sister, Juttun Baee had retained the management of the Estate, brought them up, and got them married. Respondent's family God, Thakoorjee, was delivered up by Juttun, in consequence of her having a family of her own, to Appellant, whom she also put in charge of the house above mentioned, desiring him to take upon himself the duties of master of the family. Juttun died about 10 years ago on a pilgrimage, and Appellant had ever since retained possession of the house. Respondents took no notice, because they were living with their husbands, and the Wuzeefa land had lain waste and yielded nothing that they could claim, but Appellant having lately sold 25 Beeghas of land to Firoz Shah, they had been obliged to come forward and claim their right.

Appellant in answer said the house and Wuzeefa did not belong to Respondents, but were his own by inheritance, for the Wuzeefa was purchased by his Uncle and Father out of their joint property from the proprietors, the Dindowlee Dessaees, when they were put in confinement at the instance of the Bukhshee by Kriparam Nurbheram Mehta, the Diwan of the Nuwab Hafiz ood Deen Uhmud Khan. The quantity purchased was 70 Beeghas, and the Deed was in the name of Appellant's Father, and in his name the Lease also ran, until his death when it was drawn out in Appellant's name. The two Brothers, Bindrabun and Gopaldas, never separated their Estate, but as the former had a Son named Govurdhun almost an Idiot, Appellant's father gave his Brother a writing for Rupees 500 upon the house, but that person was since dead, and the Deed thereby void, whilst no division of property ever took place, and Bindrabun's funeral ceremonies, as well as those of Govurdhun who was now dead, and of other members of the family, were performed by Gopaldas. Respondents had secretly possessed themselves of the Deed executed by Gopaldas, but Appellant called on them to prove that any Farighkhuts had ever been passed by his Father, or that the Estate had ever been divided, without which being

being proved, he contended they, as daughters, could have no claim to share the Estate, whilst joint, either by the Laws of the Shastr, or Rules of Cast.

Respondents said they would prove that a separation actually took place between the Brothers, and that they lived apart, admitting however, that Appellant had performed the funeral ceremonies, which they urged were even in divided families performed by the nearest relations.

The Deed of Sale, dated 1st Rujub 1202, A. H. or A. D. 1787, was passed by Gopaldas Bunmalee to his Brother Bindrabundas Bunmalee, for a House which he had formerly bought from Sheo Prusad with his own money, in the name of his son Ichharam, and now made over to his Brother, with all his right therein, for the sum of Rupees 501, Cash received. Appellant was the witness to this Deed.

The Lease was dated Saturday 2d Jesht Sood A. S. 1857 or A. D. 1801, passed by Mukundas Dhoolubram and Appellant Ichharam jointly, to Thakoorjee Muharaj for 36 Beeghas and a half of Wuzeefa land rented from him for the year A. S. 1858, for Rupees 69-1-0 to be paid after delivery of the Crops in Surat. (This Paper was rather a voluntary obligation entered into by the Owners of the Wuzeefa land, to offer up one year's produce of it to their household God, Thakoorjee, as this practise is very common among the followers of Vishnoo; it shews possession to be at the time in the hands of the person executing the obligation.)

Nurbheram, Appellant's half brother, deposed that his own mother during his infancy prevailed on his Father to separate witness's share of the property for his use, and that he had of this share since received 12½ Beeghas of the Dindowlee Wuzeefa, leaving as much more to Appellant. He stated his belief that his Father and Uncle did not divide their Estate, but could not say whether his Father performed the funeral obsequies of Bindrabun, as the latter died before he was born.

Dhoolubhram,

Dhoolubhram, Cousin of Respondents, said he knew all the members of this family except Bindrabun, whom he could hardly recollect. Juttun and Ruin Baees had lived apart from Gopaldas since the death of their Father, but he could not say who inherited the property of Gopaldas.

Witnesses called by Appellant again declared that the two Brothers lived together, and that Gopaldas and Appellant performed the funeral ceremonies of Bindrabun, of Govurdhun's wife, and of Juttun Baee. One of the witnesses, an Umeen in the Udalut, and Appellant's Brother-in-law, declared that to his knowledge the Brothers never divided their Estate, but held it joint till Bindrabun's death, about 35 years ago. He could not say whether Appellant and his half brother had exchanged Farigkhuts.

The Court called upon the Shastrees to give their opinion on the case, and they stated "that in consequence of the Sale by "Gopaldas, with Respondent's consent, of the House which he "had bought with his own money, (1) to Bindrabundas, neither "he nor his son, Appellant, retained any right therein; conse-"quently the house, after Bindrabun's death, would descend to "his daughters, and from them to their daughters, the Respon-"dents, whether their Grandfather had separated or not; for "this reason, that Bindrabundas had fairly bought up the right "and title which Gopaldas before possessed in the house, and "that with consent of his heir obtained to the alienation of this "property. Secondly, the Wuzeefa land had been obtained "with Funds furnished by the Estate descending from Wun-"malee, and had not been divided among his three sons, where-

"fore

(1) The Deed of Sale being declared false, the Vyuvustha falls with it, as resting only on a supposed case. It might be asked, what money of his own the united brother had to buy a house with? The principle of the Vyuvustha is taken from Mit. Book second, leaf 11th, page 2d, line 16th. "A man becomes lord of property by inheritance, by Gift, "or by fortuitous acquisition; further, property acquired by acceptance belongs to a "Brahmun; by Victory fines &c to a Kshutri, and by commerce to the Vyshyu and "Soodru."

" fore half of it belonged in equal portions to Appellant and his " half Brother, and the other half would go to Oochharam, " Grandson of Laldas No share of the undivided landed " Estate belonged to Respondents, the Grand daughters of Bin- " drabundas. They would be entitled to receive any house- " hold effects which Bindrabun might have got separated from " the joint stock, but otherwise to none."

The Court thought it had not been proved by the evidence adduced, that Respondent's Maternal Grandfather, and Appellant's Father, who were brothers, lived separately, nor did it appear that they had made a division of the Wuzeefa, nor was the Lease in the name of Respondents, of their Mother, nor of their Grandfather. They had not proved that their Grandfather left any household property, but the Deed of Sale of the house was passed by Appellant's Father in favor of their Grandfather. It was therefore decreed, in conformity to the Vyuvustha of the Shastrees, that Appellant should deliver up to Respondents the house, but that the latter were not entitled to the Wuzeefa. The house being valued at Rupees 300, it was ordered that Appellant should pay Costs only in that amount, and Respondents the remainder.

Decree 4th Sept. 1821.

The Appellant having been exonerated from all claim except for the house, raised the following objections to the decision respecting that point. That Gopaldas purchased it with money belonging to Appellant, then a Minor, that is, with the Jewels left him by his Mother, and that possession did not follow the sale to Bindrabundas, for the original Title Deeds were never delivered to him, but were still in Appellant's hands. The Court observed that the Deed of Sale was an informal document, being only witnessed by Appellant, whose interests it materially affected, and wanting the usual requisites of boundaries, indifferent witnesses, &c. The Sitting Judge was of opinion that the proof was insufficient respecting the bonâ fide sale of the house by Gopaldas to Bindrabun, and that if the sale be not found valid,

Sudur Udalut, *Sitting Judge.* J. Romer. *Chief Judge.*

Respondents

Respondents had no other claim on it. The Appeal was referred to a Competent Court for a reversal of the Decree.

Competent Court, J. Sutherland, *Second Judge.* E. Ironside, *Third Judge.* Decree 27th June 1822.

The Court agreeing in opinion with the Chief Judge, reversed the Decree of the Zilla Court, decreeing the house to Appellant, and adjudging Respondents to pay all Costs.

N°. 59.

KESHOOR POONJIYA..... *APPELLANT,*

VERSUS

MT. RAMKOONWUR, with MUYARAM and RAMSHUNKUR, sons of NURBHERAM..... } *RESPONDENTS.*

Surat Udalut, J. Kentish, *Acting Judge.* Goldsmiths.

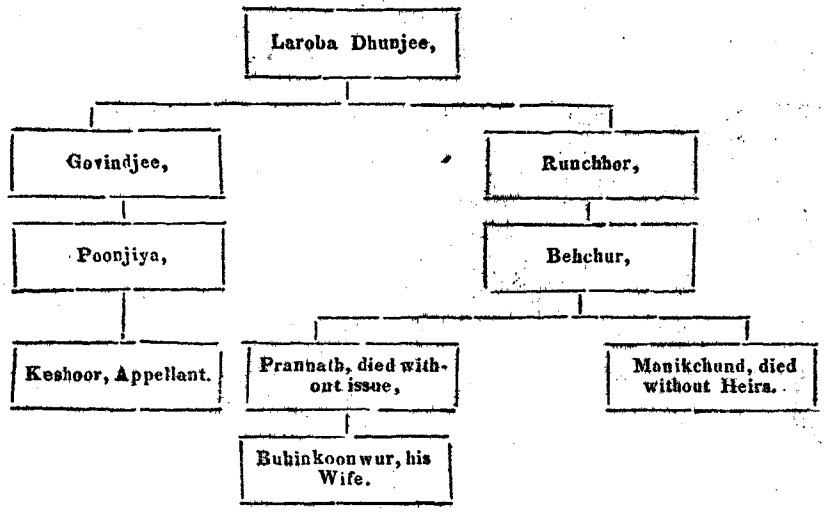
ONE Mt. Buhinkoonwur, the Widow of a Sonar named Prannath Behchur, dying and no legal heir appearing to claim the Estate, the property left by her was taken possession of by the Court, and a proclamation issued on the 7th December 1819, for Heirs to come forward and prove their Title.

Claims for the Estate of a man deceased, preferred by his Kool Gour under a Deed of Krisnarpun; by his widow's niece under a will of the Widow; and by a Great Grandson in a different branch of the person from whom the Estate came. Decided under a Vyustha of the Shastrees in favor of the Kool Gour.

Before this, on the 23d November 1819, Respondents Muyaram and Ramshunkur had moved the Court to prevent Buhinkoonwur from making away with her house, as it stood already assigned to them by her husband, to possess after her decease. The petitioners were referred for redress to a regular Suit. The present Respondents afterwards came to a mutual understanding, that Respondent Ramkoonwur should perform the funeral ceremonies of Buhinkoonwur out of the residue of her property, this was settled in a Kurardad dated 7th June 1820 in which Respondent Ramkoonwur admitted the validity of the deed of assignment mentioned by the others.

On the 23d June 1820, Appellant filed his Suit, setting forth this

this Genealogy with the deceased Buhinkoonwur, as the foundation for the claim which he thereby preferred for her Estate.



Appellant said that he came from Ahmudabad, where he was living at the time of Buhinkoonwur's death, in order to get her Estate, and finding it in the hands of Government, and that other persons had laid claim to it also, he came forward to prove his superior title, as nearest relation to the husband of the deceased, from whom it had descended. He valued it at Rupees 3,000.

Respondent Ramkoonwur, niece of Buhinkoonwur, then appeared, to claim the Estate for herself, denying Appellant's relationship, and pleading execution by her Aunt of a will in her favour, by which she had bequeathed to Respondent every thing belonging to her, and given up the Key of her Trunk &c. to her, the Niece, who was directed to perform her funeral, and distribute alms &c. all which she had done.

Respondents Muyaram and Ramshunkur then came forward, urging that they had a better right than any of the claimants, since they, as the Kool Gour, or Family Priests of the deceased Prannath, had been endowed by him with his whole Estate by a Deed of " Krishnarpun" or " Religious Gift" to have effect after the demise of his Widow, and no religious Gift could be recalled as would be seen by a reference to the Shastr.

Appellant

Appellant replying to these counter pleas, observed, with respect to the Deed of Gift mentioned by Respondents; that Prannath died in A. S. 1871 or A. D. 1815, and before his death gave every thing he had to Appellant, and moreover that as Buhinkoonwur survived her husband five years, they should have claimed it from her. Ramkoonwur's claim was equally false.

The Dhurm Putr, or Religious Deed of Gift, which Respondents Muyaram and his Brother mentioned as having been passed to them, bore date Monday 13th Posh Sood A S. 1871, or 23d January 1815, whereby Goldsmith Prannath Behchur gave in Sreekrishnarpun (or as a propitiatory offering to the Gods) his one house, situated in Wagheshwur Street of the Goldsmith's Ward, with all its appurtenances, to Hureeshunkur, Muyashunkur and Ramshunkur, the three Sons of Nurbheram Koober Bhut, his Kool Gour, or Family Priest, to have effect only after the death of the Donor's Wife, Buhinkoonwur, who, during her natural life was to have the sole use of it, and of all his property of every kind, the residue going with the house eventually to the Gours, Respondents. To this Deed were three witnesses.

Respondent Ramkoonwur opposed it with the Will of Buhinkoonwur. It ran thus "Monday 13th Margsirsh Sood A. S. "1876 (or December 1819) Baee Buhinkoonwur writes "her will in presence of Baee Ramkoonwur, and Gold-"smiths Anundram Gunesh and three others." Here followed a List of the property of the Testatrix, and then it went on, "The two Sects (of the Cast) must be fed, first the Beesa So-"nees, and then the Dusa Sect. Then let Brahmuns be fed, "and let Nirvan Bawa (a Byragee in Surat,) have a supply "of uncooked victuals sufficient for one dinner, and give the "same to Swamee Nurayun, (a Sunyasee Brahmun). Give "Rupees 5 to some God, and make the usual outlay for a "year, and distribute the Luhana presents. Buhin (koonwur)

"and

" and we five have sat down and drawn out this deed, which " is not to be broken." The paper was not signed either by Buhinkoonwur or the witnesses named.

Evidence was called by Appellant, to prove his relationship to Prannath to be as shewn in his Petition. The first of them denied that any Dhurm Putr was executed, but admitted that Prannath gave one of his houses to a Brahmun, and another of them said that such was the intention of the defunct. A third said Buhinkoonwur made objections to give up the house to Respondents, but was afterwards persuaded to do it, and a fourth spoke to the Respondents being put in possession of the house, and to Buhinkoonwur having bequeathed Rupees 50 to Muyaram, to be paid within a year after her death. Appellant's relationship to Prannath appeared to have been correctly stated.

Respondents, the Gours, being called on for the proof of their side of the case, brought forward two persons, neighbours of Prannath, who deposed to his having before them acknowledged to have passed the Deed of Gift in favor of his Gours, since he had no family of his own. This conversation took place in presence of Buhinkoonwur, who bestowed some Alms, or Dukshuna, upon them.

Wumulchund, the Writer of the Deed, and Jaeekrishn, one of the subscribing witnesses, clearly and distinctly proved the execution of it in presence of Buhinkoonwur, who assisted Prannath, who they all agreed was blind, in performing the ceremonies usual on such occasions, such as giving away Dukshuna, taking water with leaves of the Toolsee plant in the hand &c.

Prannath had said that the Title Deed of the house should not be given up to Respondents till death of Buhinkoonwur, and Respondents admitted that they never had received it up to the present time. It was upon this Title Deed that Buhinkoonwur wrote the bequest of Rupees 50 mentioned by one of the former witnesses.

The

The witnesses to the paper given in by Respondent Ramkoonwur as the Will of Buhinkoonwur, could only state, that they were asked to make it out as an Inventory of her Effects, and that she in their presence directed Respondent Ramkoonwur to perform her funeral ceremonies out of this property, and gave her up her Keys. They added that Ramkoonwur did perform these ceremonies in the name of the deceased.

Oomyashunkur, another witness called by her to prove this, also corroborated the Krishnarpun Deed, and established it by relating an observation made to him by Buhinkoonwur when he condoled with her on a Robbery in her house, " that it did " not signify to her, as the loss was the Gours."

Hureeshunkur, another person called by Ramkoonwur, also spoke to the Krishnarpun Deed.

The case being here closed, the Court called upon the Shastrees to shew, upon a statement of the case laid before them by the Court, to whom the property of Prannath rightly belonged, and particularly the Value of the Deed of Krishnarpun.

They said, the sons of the Kool Guor are from the tenor of the Krishnarpun fully entitled to the balance remaining of Prannath's Effects after Buhinkoonwur's death, and may take them, without breaking any law of the Shastr. Again since the right of possession passed away by this Deed from the Donor to the Donees, the Sons of the Kool Guor, the Heir of the Donor retained no longer any right to bequeath them to other than them. Nor was it proper that Buhinkoonwur's funeral expenses should be defrayed from these Effects, because it was only permitted to her by the deed to apply them to her own expenses during her life, but it was not enjoined therein that her funeral expenses after her death should be paid out of the balance. However, since the two Brahmuns, and Mt. Ramkoonwur (Respondents) had executed between them an agreement, whereby the former admitted that Ramkoonwur might defray Buhinkoonwur's funeral cere-

monies

monies out of the Effects devolving to them by the Krishnarpun, the point need not be further agitated. Appellant Keshoor Poonjeea had proved himself to be a Relation of Prannath in the fourth remove, but his right to the property of Prannath in quality of relation was annulled by the Deed by which this property was given away to Respondents. If Buhinkoonwur had sold the House mentioned in the Krishnarpun, it was an illegal transfer, because she could not sell a House which at the time belonged of right to another, and the Buyer could not retain possession. But as she had taken advantage of the stipulation in the Deed, permitting her to maintain herself out of the Effects as long as she lived, to sell the house, the price if in deposit must be restored to the purchaser, but if spent, the Respondent must make it good from the rest of the property, and redeem the house. (1)

The Court, in summing up the evidence, observed, that notwithstanding Respondent Ramkoonwur's denial of the Krishnarpun, two of the witnesses called by her had established its validity; and moreover she had herself admitted its authenticity in the Kurardad, and it of necessity followed that on the admission of this Deed the Will of Buhinkoonwur must inevitably fall, the existence of the latter being incompatible with that of the former. On these grounds therefore the claims of Respondent Ramkoonwur, were disallowed and rejected.

Appellant objected to the Deed of Krishnarpun, that it was not a legally executed Instrument, because Buhinkoonwur had not affixed her signature to it. But the Court overruled this plea on the grounds that such sanction of Buhinkoonwur was not necessary or imperative, because the Deed was not exigible until after her decease.

The Court declared its opinion, that the execution of the Deed

(1) Vide other Vyuvusthas on Krishnarpun.

of Krishnarpun, or Dhurm Putr, by Prannath Behchur, husband of Mt. Buhinkoonwur, in favor of Respondents Muyaram and Ramshunkur, his Kool Guor, or Family Priests, had been fully proved, and as the evidence produced by Appellant in no degree tended to annul or invalidate the proof of the Dhurm Putr, the claim of Appellant was disallowed and the property in charge of the Court belonging to the Estate of Prannath Behchur, and late in the possession of Mt. Buhinkoonwur, was in conformity to the Terms of that Document, and the Law of the Shastr, adjudged and made over to the Custody and possession of Respondents Muyaram and Ramshunkur. And as the funeral expenses, incurred by Respondent Rankoonwur in consequence of the demise of Mt. Buhinkoonwur, could not in conformity with the Hindoo Law be recovered from property alienated for religious purposes, the amount was decreed not to be recoverable from the Estate, reserving to all the Respondents the right of suing for, or otherwise adjusting among themselves, any reciprocal claims which might hereafter be found to exist under the Kurardad. Costs on the part of the prosecution were adjudged to be borne by Appellant, and those of the Defence to be defrayed from the Estate in deposit.

Decree 24th Sept. 1821.

Sudur Udalut, *Sitting Judge*, C. Rome, *Chief Judge*.

The Court observed that the whole merits of the Suit, as far as the interests of Appellant were concerned, depended on the authenticity of the Krishnarpun, and as it agreed with the Zilla Judge, in holding it sufficiently proved and established, and that its provisions and conditions were in conformity to the Hindoo Law, the Decree of the lower Court was affirmed with Costs against Appellant.

Decree 11th June 1822.

N°. 60.

MANUKCHUND PREMCHUND.....*APPELLANT*,

VERSUS

MT. PREMKOONWUR.....*RESPONDENT*.

Surat Udalut, J. Kentish. *First Register.*

Claim by a person who had put his wife away on a seperate maintenance, to oblige her to give security for her Dower, said to be made away with. Dismissed on the principle that a woman is sole mistress of her Dower.

APPELLANT filed this Suit on the 10th July 1811 in the Surat Udalut, against Respondent, for Rupees 800, amount value of Respondent's Dower Jewels. It was stated in the Plaint that his Father, Premchund, took Respondent as his second Wife, but she bore him no children. Appellant and Respondent separated and came to an agreement in A. S. 1864 or A. D. 1807 that she should keep her Dower, value Rupees 850, and Rupees 250 in Cash which she then had in deposit, and not make use of them, and Appellant thereon agreed to give her Rupees 49 per annum, for food and raiment. He could never see more than Rupees 300 worth of Jewels on her person, and he feared she had made away with the rest and was spending the Cash, which was in deposit with a third person, in feasts to her own family and friends. He prayed the Court therefore to oblige her to account to him for this money and such of the Jewels as were missing, and to make her give Security for the whole.

Respondent defended the case on the general principle of Law, that a Wife is sole and absolute mistress of her own Dower. She mentioned a counter claim against him for the maintenance money, which he had not paid her for a long time, and for which she had a suit pending.

The agreement mentioned by Appellant was passed by him on Wednesday 11th Kartik Vud A. S. 1864 or 25th November 1807, to Respondent, setting forth, that he had formally invested her in presence of four witnesses, with all the Jewels of her Dowry, value Rupees 850, and had deposited Rupees 250 of her Dower with Bundrabun Keshow Patel, for which she was to receive Rupees 15 per annum, and this sum, with Rupees 34,

Rent

Rent of a house let to two persons, exclusive of Meerwan Bawa Byragee (who was to live in it rent free) made up the sum which he thereby allotted to her as maintenance. The paper concluded with an injunction to Respondent not to part with any of this property without Appellant's consent.

It was proved in Court by two out of four of the witnesses, who also declared that no custom prevailed among them, of a wife furnishing security for her Dower.

It appeared to the Court that in conformity to the Law of the Shastr, Respondent had the sole controul over, and disposal of, her marriage dower; that the same was her own personal right and property, and that there was nothing whatever in the Agreement, militating against this principle. Wherefore the claim of Appellant to oblige Respondent to give Security, was dismissed, Costs being paid by Appellant.

Decree 30th Nov. 1821.

Sudur Udalut, *Sitting Judge.* J. Sutherland, *Second Judge.*

The Court called on Appellant to show what part of the property Respondent had taken up and appropriated to her own use. He said that she had made away in part both with money and ornaments. That Respondent herself acknowledged expenditure of Rupees 50 in Cash, and sale of three of the ornaments for Rupees 61, and that he could prove a much greater amount to be missing.

Respondent it appeared had been a widow during 18 years, and had been obliged during that time frequently to sue Appellant for her annual income; she had been driven to make use of her Dower in the mean time, and she had been in Court and obtained no less than 15 Decrees against him including Appeals on that head. On a verbal reference to the Shastree, the Court learnt that Respondent had made no improper alienation of the Dower, to authorize Appellant to demand security from her, and his Appeal was dismissed with Costs.

Decree 18th June 1822.

No. 61.

N°. 61.

BHUGWAN MEETHA.....*APPELLANT*,

VERSUS

KASHEERAM GOVURDHUN.....*RESPONDENT*.

Surat Udalut, J. Vibart, 2nd. *Register*. Sootar Cast.

ON the 24th July 1821, Appellant sued Respondent, saying that on Tuesday the 3d Ashad Vud A. S. 1877 or 18th July, there was a Cast Dinner at the house of Mt. Umroot, who gave it for the twelfth day after the death of one of her relations, and on the next day, the 4th, Appellant had to give a dinner for the thirteenth day, so he went to Umroot's house to ask for the Cooking Pots, when Respondent came there and raised a dispute, refusing to let Appellant have them. Appellant had lost his character in the Cast, and therefore now filed a Suit against him in the amount of Rupees 800 as damages for loss of Cast.

Claim by Appellant, a Sootar against Respondent, a member of the Cast, to damages for loss of character caused by Respondent's refusing him the use of the Cast Cooking Pots. Dismissed for want of proof that the Cooking Pots were refused to Appellant by the Body of the Cast.

Respondent totally denied the claim, and said he had never interfered with Appellant's taking away the Cooking Pots. Appellant had broken through the Cast Rules, and the Cast had punished him by refusing him the use of their Cooking Pots. But a man did not lose his character by not having the use of the public Cooking Pots, since dinners were constantly given by individuals who cooked them in their own vessels.

The Court did not consider it necessary to call on the Cast, but allowed the Respondent to cross examine Appellant as follows.

Question.—Are you out of the Jumaut owing to this dispute or not?

Answer.—I am not.

Question.—Are Cast Dinners ever cooked in any other Pots than those for which you prosecute?

Answer.—Not without some good reason.

Question.

Question.—On what account was the meeting of the Cast to be held at your house?

Answer.—On account of the decease of Hurka Baee.

Question.—If I prevented the Pots being taken from Umroot's house, in whose possession did they remain?

Answer.—You carried them to your house.

The Court then asked Respondent who had charge of the Pots belonging to the Cast. He said the Patel. Appellant was then asked what loss of character he had sustained by not getting them. He answered, that it was much the same as turning him out of Cast, but confessed that he was still admitted to Cast feasts, and was looked upon in the same light as formerly. He said that when he went to fetch the pots from Umroot, she made a demand for the Jewels of Hurka Baee, which he had, and he told her she might go to the Udalut. He admitted also that the person who wanted the Cooking Pots, ought to go to the Patel, and when done with, they should be returned to him again, but if it should happen that the last person who took them had not returned them, it was usual, after obtaining the Patel's permission, to receive them direct from the person in whose house they then were.

It appeared to the Court that Appellant's claim lay against Umroot, and not against Respondent, as according to the custom he himself had stated, it was incumbent on Umroot to have given over the Pots to Appellant according to the permission granted him by the Patel, and since Umroot had refused to make over the Pots to Appellant, his claim, if just, must be against Umroot, but he had not pointed out in what way his character had suffered, and his claim to damages was under these circumstances dismissed with Costs.

Decree 17th Dec. 1821.

Sadut Udalut, *Sitting Judge*, J. Sutherland, *Second Judge*.

The Court found from the Hindoo Law Officer, that Appellant could not be endamaged, either in credit or property, by the

act

act complained of, even if fully established, and his Appeal must therefore fall. His remedy lay with the Punchayut, which had full powers to correct any matter of this description, and his having carried the action through to the Sudur Udalut evinced a spirit of litigation strongly to be deprecated, but as he had done it to his own manifest injury the Court was inclined not to visit him with the punishment due to a litigious Suitor, though he had justly incurred it. The Zilla Decree therefore was merely affirmed against him with Costs.

Decree 17th June 1822.

N°. 62.

REWADAS KHOREEDAS, and MUNCHHA Widow of MUHOWJEE NURSIOON } APPELLANTS,

VERSUS

UBHERAJ PITAMBUR.....RESPONDENT

Ahmedabad Udalut, D. Greenhill, *Register.*

RESPONDENT filed a Suit on the 23d September 1821, against Appellants, his neighbours in the town of Dundooka, for Rupees 800 damages, to oblige them to give up a piece of waste building ground, four Cubits broad, lying at the back of his house and belonging to him. He said he possessed in Dundooka in descent from his Grandfather, two substantial houses, and the ruined foundation of a third; behind both of the houses was a piece of waste ground extending to the house of Koonwurjee Pathuk, and the same piece was continued on behind the ruined house, until it reached the ward in which Appellants lived. He in A. S. 1876, rebuilt this ruined house on the old plan, without taking in the small piece of ground behind it. Afterwards, Appellants built on it a small room for which it was just large enough, so that its supports were built into the back wall of Respondent's house. When Respondent remonstrated, Appellants said it was a party wall. Respondent said he had never heard of the back wall of a house being

Suit by Respondent for a piece of ground in Dundooka.

Declared by the Zilla Court already competently decided in Respondent's favor by Appellants having withdrawn a former Suit of their's for the same by Razeenamu.

Interlocutor on the grounds that a Plaintiff, by filing a Razeenamu does not debar himself from a fresh Suit for the same sub-

subject of dispute. Respondent's suit dismissed on revision by the Zilla Court as unproved; Decree affirmed by the Sudur Udalut.

a party wall, though he had of a side wall. Appellants were induced by his remonstrances to file a Suit No. 17,457, for Rupees 32, as damages for interrupting them in their possession. It was referred to the Dundooka Umeen, who took the names of the witnesses, and had named a Punchayut. As the Suit did not get on, it was brought to the Sudur station, and referred to the Sudur Umeen for decision. Appellants then filed a Razeenama, but as they had since troubled him and would not undo their work and remove the building, he brought this action to try their title to retain the ground.

Appellants answered that their ancestor bought their own house, together with the piece of Ground in dispute, for Rupees 201, in the year A. S. 1812; at which time a room was standing on it. In proof of possession they said that in one part of the premises looking into the Bazar, they had a shop, and they gave up the house to their partner in it, as his share. He sold it in A. S. 1847, and Appellant's Grandmother lived in the room, which was then standing, until A. S. 1846. In the former case of Rupees 32, Respondent had exhibited against them a Deed signed by their Grandfather, but this was no proof of his Title, for the Deed had relation only to a small room, whereas Respondent had built a large house. Their reason for filing a Razeenama in that Suit was that they might withdraw it and file a Suit for a larger amount, or Rupees 149-2-0 when they found he was building his own house on a larger Scale. Their second Suit was numbered 27,740, and Respondent had filed one against them No. 27,749, for Rupees 64, as his Costs—which Suit he also withdrew by Razeenama.

Respondent denied that Appellants' family had ever bought this spot of ground.

The Court found on reference, that the Appellants' new Suit and the present one by Respondent were both filed on the same day, but that the present one stood first on the file. Calling for the proceedings of the Sudur Umeen, it appeared from

from them that Deeds, documents, and evidence were taken before the Dundooka Umeen, and it only remained to take proof of the Custom, when the case was referred to the Sudur Umeen, and that Appellants, instead of appearing, withdrew the Suit by a Razeenama, in which they had stated that the damage was greater, and they would institute another Suit. The action was withdrawn accordingly, but no permission to sue again, by which their right to do so might have been preserved, was granted by the Sudur Umeen. The cause before the Sudur Umeen, and the Appellants' new Suit now before the Assistant Register, were in substance the same, and Appellants could shew no reason for laying their damages higher, nor for withdrawing the Suit when the investigation was nearly closed. Under these circumstances the Court felt itself bound to consider the case on the part of Appellants as already determined by a competent Court. If otherwise, a party might try a cause successively in each Court, again and again, until he obtained a favorable decision.

It was accordingly found, that Appellants, by withdrawing the Suit No. 17,457 from the Sudur Umeen's Court, withdrew the claim preferred. Respondent was declared to be at liberty, so far as Appellants were concerned, to take possession of the property sued for by Appellants, since it did not belong to them, and if interrupted by Appellants in so doing might sue for damages. Decree 29th Dec. 1821.

The Appellants brought their Appeal on general grounds of dissatisfaction, stating also that their second Suit for Rupees 149-2-0 had been dismissed in consequence of the above decision having been passed against them, and that Respondent had obtained from them all his Costs in their original Suit, on the same grounds. Sudur Udalut. *Sitting Judge.* R. Ironside, *Third Judge.*

The Sitting Judge held that Appellants had the power of withdrawing their action in the first instance, without barring their right to prefer another, and that by so doing they did not

in any wise injure their claim to the ground in question. And since no complete investigation had yet taken place as to whom the matter in dispute belonged, he recommended the passing an Interlocutory decree for a trial de novo on the merits.

Competent Court, J. Sutherland, *Second Judge.* T. Barnard, *Fourth Judge.*

Interlocutory Decree 1st August 1822.

The Court passed an Interlocutory Decree, on the grounds, that the mere act of a Plaintiff in withdrawing a Suit from the File, where there has been no judgment on its merits, especially when this is specified to be done for the purpose of instituting a more complete trial of the same demand, does not bar his right to bring forward his claim again in any way he may think proper.

Suit revised in the Zilla Court before, W. A. Jones, *Judge.*

The Zilla Court obtained plans of the premises in dispute, admitted by the parties to be correct, and they were then called on for their documents and evidence.

Respondent produced two Deeds, and named five witnesses. The Deeds were a Farighkhut and a Deed of Gift, the first dated in A. S. 1732, the second in A. S. 1807, each of them relating to the transfer of some houses and property in the town of Dundooka, but not that in dispute. Of the witnesses, not one could say to whom the ground belonged. Two of them said Respondent built the wall of his house on an old foundation, and one of them said that there was once an old room on it, upon which Appellants had some claim.

Appellants gave in a Deed of Sale dated 5th Posh Vud A. S. 1812, by one Mt. Nathee widow of Munguljee, selling her shop and a room to Vasun Runch,hor, and Vusta Kulyan for Rupees 201. Six witnesses also appeared for Appellants. Three of them deposed that there was formerly a room on the spot of ground in dispute, and that the Appellants, Grandmother Raj-Baee formerly inhabited it, one of them said up to A. S. 1841. A fourth said he never saw any room on the ground, and the fifth proved a signature of a witness both upon the Deed of the Sale, and upon the Respondent's Deed of Gift.

The

The Zilla Judge thought that Respondent, as Plaintiff, had not made good his claim, for nothing was to be learned from the witnesses called by him, nor was there any thing relating to the ground in dispute in the two documents filed by him, whilst from the evidence produced by Appellants, it seemed that their Grandmother lived in the room which stood on the ground claimed by Respondent. It was therefore decreed that Respondent had not proved his case, and it was dismissed, Costs being borne by him.

Decree 6th Dec. 1823.

The Court was decidedly of opinion with the Zilla Judge of Ahmudabad, that Respondent had failed to prove his case, and the Judgment of the lower Court under date 6th December 1823, was affirmed and the Ground in dispute adjudged to Appellants, with all thier Costs.

Sudur Udalut, Case resumed, E. Ironside, *Third Judge* Decree 23d Dec. 1823.

N° 63.

KRISHNARAM MOORLEEDHUR.....APPELLANT.

VERSUS

Mr. BHEEKHEE, Widow, and HURGOVIND, Son, of HUREE BHAEE PREMJEE deceased. } *RESPONDENTS.*

J. Vibart, 2d Register.

THE Suit was first filed by Appellant against Respondents in the Surat Udalut, on the 14th January 1820, he therein stating that Huree Bhaee Premjee in A. S. 1874 or A. D. 1818, took in Izara or Lease, from the Collector, certain Purgunnas for Rupees 1,475, and Appellant under his Father's name stood Security for Huree Bhaee. The Collector recovered the sum from Appellant, who had his Receipt to shew for this Rent, and he had a claim beside, for Rupees 126 expense of maintaining Sebundees; Rupees 101, Premium stipulated for Appellant's risk in standing Security; Rupees 51, the yearly Present. (Inam) from Government; Rupees 69, interest; and Rupees

Case of a Widow disposing in liquidation of her husband's debts, of a house coming from her father to which her own son was Heir. Similar to No. 41 of the

Bombay Cases by precedent of which it was decided.

Rupees 13, difference of exchange between the current and Surat Rupees, making a total of Rupees 1,835, against Huree Bhaee. Appellant had received from him Rupees 301, as the Tarun or usual Deposit, and had realized Rupees 897-3-6, by the usual process of stopping the Ruyuts at the City Gate, when going home with the return of their produce disposed of in the Town. In security for the balance, of Rupees 636-0-40, the Respondents had passed to him a Malzaminee Bond making over to him two Houses of theirs which had been duly registered, and delivered to Appellant with three Title Deeds, and under these Deeds he now sued for possession of the houses, or repayment of Rupees 636-0-40 the balance due of the original debt.

Respondent Bheekhee answered for herself and son, whom she stated to be still a minor, that the claim and story set up by Appellant were totally false, since her son could not on account of his age possibly enter into any Security for his Father's debts, and the mortgage was never made, unless indeed her late husband might have done it clandestinely, but it would not hold good, since the houses were derived from her own Father, and must by the Shastr descend unalienated to her son; she knew also from the accounts, that Appellant had received every pice due to him under the Security, and Huree Bhaee before his death had filed a suit against him to recover the "Deposit" detained by him and the houses, but the Suit was struck off in consequence of an Error caused by not inserting the value of the houses, for which Huree Bhaee was told by the Court he might sue separately.

The Malzaminee Bond was dated Thursday 7th Kartik Sood A. S. 1875, or 5th November 1818, registered on the 28th, and after distinctly stating the fact of the Security entered into by Appellant with the Collector, it declared, that the houses in dispute, given by Bheekhee's Father to her in Krishnarpun, were to be given to Appellant, together with Rupees 301 the Tarun,

Tarun, or Deposit, and were to be retained until full satisfaction of his claim against Huree Bhaee. It was signed by both the Respondents, the husband signing for his Wife.

An Extract from the Collector's Receipt Book, handed up by Appellant, was verified by a reference to the Collector.

Appellant also exhibited the agreement between himself and Huree Bhaee, dated Monday 5th Asvin Vud A. S. 1874 or 19th October 1818. It laid down various Rules for the management of the Purgunnas, and the right of Collection by Appellant, and confirmed to him all the Items specified in the Petition, except the Present from Government.

Respondents exhibited their Account with Appellant, crediting him with Rupees 1,702 for Principal, Premium, and Pay of the Establishment, and debiting him with Rupees 2,105-1-0 from the date of the agreement, up to Sunday 13th Jesht Vud. This was taken from the Records of the former Suit.

The witnesses to the Malzaminee Bond deposed to its execution, and to the truth of the prior transactions between the parties.

The Court proposed a Question to the Shastrees to know, whether a woman could legally mortgage a House descending to her from her own Father, if she had a young son alive? They answered, a woman is the exclusive Heiress to property left by her own Father, and if she be alive, her Son must inherit; wherefore a woman has the power of mortgaging a House so derived to her.

The Respondents then reminded the Court of the opinions given by the Law Officers of the late Court of Appeal, and now of the Sudur Udalut on the parallel case of Poonjeea Bhaee and Dadabhaee, sons of Kullunjee Manukjee Paruk, versus Mt. Prankoonwur, and to the Decrees passed on it by the late Provincial Court and Sudur Udalut. (1)

The

(1) Bombay Cases No. 41.

The Court held, that it must be guided in its decision by those opinions, the point at issue in the present Suit being precisely the same as that in the precedent quoted. The sum of Rupees 585 being proved to be justly due by the late Huree Bhaee Premjee to Appellant, a Decree was passed for that amount, to be recovered together with Costs of Suit from any property forthcoming belonging to the late Huree Bhaee Premjee.

Decree 21st Dec. 1821.

Sudur Udalut, *Sitting Judge.* E. Ironside, *Third Judge.*

Appellant claimed reversal of this decision, and pleaded his right to have a Decree against Respondents for the houses, because they had both signed the Malzaminee Bond, making the houses liable for the debt established against Huree Bhaee.

Respondent appeared in person, but declined entering any pleadings on the score of poverty.

The Court observed, from the pleadings in the lower Court, as well as from the Petition of Appeal, that no objection had been taken by Appellant to the assertion that Respondent Hurgovind was still a minor, nor was any demand made that Bheekhee, or the son on his coming of age, should be held personally responsible for the debt, Appellant's prayer being solely to have the houses made available for liquidation of his claim. And both the law and Practise established that a mother having a young son could not render property descending to her from her father, available to the debts of her husband. Wherefore the Court, after consulting the Shastrees upon their former opinion, decreed that the decision passed in the lower Court, should be upheld, Appellant paying all further Costs.

25th June 1822.

Friday 15th July, J. Romer, *Chief Judge.* J. Sutherland, *Second Judge.* E. Ironside, *Third Judge.*

Appellant presented a Petition for review of judgment praying that he might be permitted to amend his Appeal in the name of Respondents, instead of against the houses, and that a rehearing of the Appeal on that point might be allowed, requesting the Court to call at the same time for three Papers in the case, not forwarded by the Zilla Court.

It

It was referred by the Court to the Judge who tried the Case.

The Third Judge on the 15th July, issued a Precept to the Zilla Court for the three Papers which proved to be,

First—The Deed of Gift of the houses to Respondent Bheekhee by her Father.

Second—A Deed of Sale of a House by two Brothers to Respondents for Rupees 100, on the 4th Vyshak Vud A. S. 1874 or 24th May 1818.

Third—A Deed of Gift of another house to Respondent Bheekhee by Ach Baee, and Patel Mungul Umbaeedas on the 2d Kartik Sood A. S. 1849 or A. D. 1803.

The Sitting Judge after examining these Papers and consulting with the Shastree, was of opinion that no just reason had been shewn for granting a review of Judgment, and rejected the Appellants' prayer to that effect.

N°. 64.

DUSTOOR DADA BHAEE ROOSTUMJEE. APPELLANT.

VERSUS

ANDHAROO KHOORSHEDJEE RUTTUNJEE..... } *RESPONDENT.*

Surat Udalut, J. Kenrish, *First Register.*

ON the 28th August 1821 Appellant filed this suit for Rupees 800, as damages for loss of character by Respondent's having given him a blow on the face.

Claim by the High Priest of the Parsees for Rupees 800, damages for a blow received at a Public meeting from Respondent. Rupees 25

It appeared from the Plaint that on the 15th day of the 7th month, being the 15th Mehur Yuzdizurdee 1190, or 16th April 1821, a meeting was held on account of Hormuzjee Jeejee Bhaee's death, and Appellant was according to custom called to it by Nowshirwanjee, brother of the deceased. It was held at

For the blow, and Costs in proportion awarded to Appellant to whom Sudar Udalut granted all Costs, but no higher damages on the score of Respondent's poverty.

at the house, at about 3 o'Clock. Appellant was sitting in his usual place at such an assembly, and having finished the prayers, and the object of the meeting, got up with the rest to go away, when Respondent also got up, and without any cause struck him a blow on the face with his fist, in presence of the whole assembly. Appellant had since lodged a complaint on the Foujdaree side, but in consequence of the lapse of time was recommended both by the Zilla Judge and the Sudur Udalut to sue for damages for loss of Character proportionate to Respondent's means. He now stated that as Dustoor or high Priest of the Unjoomun, or Punchayut, he felt himself borne out in laying the damages at Rupees 800, as a proper compensation for the insult and injury he had received whilst acting in that situation, praying the Court at the same time so to bind down Respondent that he should not insult him again before the Unjoomun.

Respondent answered that the complaint preferred by Appellant, who was his Mother's Brother, was unfounded, and proceeded to say that he himself had about 3 months before filed a Suit against Khoorshedjee Dosa Bhaee, for having without cause suspended him from preaching in any of the Temples (Ugyaree,) which had induced that person to get up this false charge through Appellant. Burzorjee was Dustoor or High Priest of their, the Shuhursaee, Schism, and Appellant only his Deputy, not Dustoor in his own right, and Respondent was ready to prove from the Atush Buhram case, that he was perfectly unfit for this situation because totally ignorant of its duties and obligations. With respect to the charge of assault, Appellant had abused him at the door of the assembly house (Dhurmsuraee, of which two or three are set apart by the Parsees in Surat for holding their meetings, Feasts &c.) and lifted up his hand to strike Respondent, who said he could prove that he fled from Appellant but never struck him, and as for the amount of the damages, their character, they being so nearly related, must be equal, and they both subsisted upon the little they could scrape together

together by their clerical duties, from the laity (Bedeen) or bully them out of, or get by begging from their Brethren (Andharoo) the clergy, and it was not to be supposed in reason that he could pay any such large sum even if cast in Court.

Appellant asked, if they were really equal, why had the Udalut only applied to himself and the Modee on all points of Custom? He said that the Government had considered his brother Kaoosjee as Dustoor, and that Appellant after his death had been regularly installed in the office, and conducted it he hoped properly. So far from Respondent's being unjustly suspended, the Modee took up the matter of assault publicly on the representation of the principal members of the Unjoomun, who begged him to take some steps for Respondent's punishment, otherwise they should be all insulted in the same way; this notice of the offence arose from no complaint of Appellant.

Respondent now said the dispute commenced with his taxing Appellant with keeping Burzorjee, the son of Kaoosjee Dustoor, out of his rights, and not allowing him even a necessary maintenance, though Appellant received the Religious Revenues of the whole Nuban Poora (the Division in which the greatest part of the Parsee population of Surat resides,) and more besides, which observation made Appellant attack him, and which ended in Respondent's suspension from his functions. He admitted that Burzorjee was both deaf, dumb, and blind, and received a pension from Government.

Four witnesses distinctly proved the assault upon Appellant by Respondent at an Oothumna, (or Funeral ceremony performed the third day after death of a person,) after some words had passed between them. The fact of striking being thus proved, the Court adjudged the sum of Rupees 25 to Appellant as damages for the assault, together with Rupees 29 for Costs, the residue being borne by Appellant.

Decree 17th Jan. 1822.

Sudur Udalut, Sitting Judge, J. Romer, Chief Judge.

Appellant was dissatisfied with this decision, first because the sum

sum awarded was too small a compensation for so gross an affront; and secondly, that although gaining his cause, he was saddled with a heavy expense for Costs. Respondent declined pleading, because he could not bear the expense from poverty.

The Sitting Judge held that Appellant was fully entitled to the protection of the Court, both in his public and private capacity, in aid of that personal respect which his Character should bear in the eyes of the Parsee Community, and in recompense for any bodily injury he might have suffered from the violent and unlawful act of the Respondent. The latter's plea of poverty might be a reason for diminishing the amount of damages, but not for lowering them so much as to take away all proportion between them and the injurious act in compensation for which they were given.

The lower Court had also made the Costs fall heavily on the party gaining his cause, by taking the amount of the damages awarded as the standard by which Respondent's Costs were to be measured. Courts might certainly apportion the Costs between parties in a Suit, according to their view of the circumstances of it, but in the present instance the express words of the Regulation were in favor of granting Appellant full Costs, for Section 7th of Regulation 2d of 1800 says, "the Judge "is to give judgment according to justice and right, and is to "order Costs to be paid to the party in whose favor the de-"cree may be made." Upon these grounds the Sitting Judge was of opinion that the Register's Decree ought to be amended to the extent of awarding one hundred Rupees damages to the Appellant from the Respondent, who ought to make amends in person, if unable in pocket, for the gross injury he had done Appellant, and should pay full Costs in both Courts, and the Suit was referred for making this amendment to a Competent Court.

Competent Court: J. Sutherland, *Second Judge.*

Which fully concurred in the view taken by the Chief Judge, but in consideration of the acknowledged poverty of Respondent,

Respondent, was inclined not to adjudge a larger sum in the shape of damages than he could bear; and because of the heavy Costs in both Courts, they held this ought not to exceed twenty five Rupees, the Register's decree being amended by awarding full Costs in both Courts, being Rupees 232 against Respondent, under the provisions of the Regulation quoted by the Chief Judge.

T. Barnard, *Fourth Judge.*

Decree 18th July 1822.

N° 65.

Mr. KOONDUN BUHOO.....Appellant,

VERSUS

SHER KHAN BHAEE KHAN, and others..Respondents.

THE Suit was filed on the 22d November 1820, by Appellant, in the amount of Rupees 800, value of four fields containing sixteen Beeghas of Wuzeefa or free land situated in the township of Nureead.

Kaira Udalut, G. L. Elliot, *Register.*

She said that about 50 years ago her Father mortgaged this land to one Mulik Sahib for Rupees 150. Mulik Sahib held it for about 25 years, and then fled on account of debt to Surat, from which time Respondents had without right or title seized on and kept this land. Appellant went in A. S. 1871 to Surat, and spoke to Sooltan the Son of Mulik Sahib, who gave her a written order upon the Foujdar of Nureead, Ahmúd Beg, to cause delivery of the land to her upon her paying the amount of the mortgage to the Heirs of Waghjee Dessaee. Respondents agreed at first to give it up, but as they did not do so, she now sued for it.

Claim for four Beeghas of Wuzeefa land in the town of Nureead. Dismissed for want of proof.

Respondents said that they possessed in descent from their Father and Grandfather, 8½ Beeghas of land, which had been in the hands of the family upwards of Sixty years; that they possessed

possessed no more, and Appellant had no just claim whatever against them, as they had no land belonging to her.

Appellant's only exhibit was the order said to be from Sooltan son of Mulik Sahib, without a date, but written in the names of Mulik Hoossain, Mulik Russool, and Mulik Himmut, to Shekh Bhoola, Mulik Ajum, Mulik Taj Moohummud, and Ruttun Singh Bhat, desiring them to receive from Appellant, daughter of Mulik Ussud, and Wife of Mulik Hoossuen, Rs. 150 and deliver over to her 15½ Beeghas of land; it concluded with these words, "Bhaee Khan (father of Respondent Sher Khan) "has enjoyed the rent of this land for 80 years, without any "just title, as he has neither tie of kindred nor claim of debt "upon us, and you must therefore levy the amount rent from "him for that period, and send it to us."

Appellant was unable to shew how Sooltan came to have any interest in the land, but said she would prove that Respondents acknowledged the land to belong to her in presence of Mirza Ahmud Beg, the Foujdar of Nureead.

That person deposed to his knowledge of the parties, and said that Appellant made a complaint to him about 7 years before on this subject, when he summoned Bhaee Khan, who said he was ready to abide by the decision of a Punchayut, on which witness asked two persons then present to sit and arbitrate, but nothing further was done. He recollected Appellant's having brought him a Paper from some person at Surat, but could not say what had become of it, but that exhibited by Appellant was not it.

The two arbitrators corroborated this, adding that Respondents had distinctly denied Appellant's claim, and they had called upon her to bring proofs from Sooltan of his title, on which she produced the above paper, but nothing further was done.

The Court dismissed the claim as Appellant had not substantiated her Suit, nor proved that Respondents had acknowledged the land to be her's.

Decree 12th Nov. 1821.

Appellant

Appellant stated nothing new in her pleadings, but exhibited three Documents, said to have been found since the date of the lower Court's Decree.

Sudur Udalut, Suit and Appeal, *Sitting Judge*, J. Romer, *Chief Judge*.

They were Purwanus, one of them A. H. 1075, the others in the 9th and 13th of Jooloos, the first for 100 Ilahee Beeghas of land, the other two for 50 each.

The Court observed upon these, that no proof had as yet been adduced that the lands now sued for were the same as those said to have been held by Appellant's Grandfather and now in possession of Respondents, nor of the time and manner in which Appellant's ancestors lost possession of them, nor that Respondents got possession in the manner stated by Appellant. Under all the circumstances of the case, the Court considered it one in which neither justice nor necessity required the title gained by long occupancy by the Respondents should be disturbed even if these free lands had been proved to have formerly belonged to Appellant's family, as none of the requisites laid down in Section 6th of Regulation 3d of 1814, were to be found in this case.

The Zilla Court's Decree was therefore affirmed with Costs, to be paid eventually by Appellant from any property she might be found possessed of.

Decree 2d July 1822.

N°. 66.

DADA BHAEE RUTTUNJEE.....*APPELLANT*,

VERSUS

SENHOR JOSEPH NIMMO.....*RESPONDENT*.

APPELLANT'S original action, filed against Respondent for Rupees 219-2-0, on the 1st September 1818, was referred for decision to the Register's Court. Appellant had furnished Respondent with Jewellery viz: 1 pair of Diamond Earrings;

Surat Udalut, J. Kentish, *Acting Register*.

An arbitrary deduction from a creditor's Bill, held by the Zilla Court not warning on the Creditor without his consent.

Creditor not at liberty to charge interest, by the Custom of Surat, until two months after delivery of goods.

A decree affirmed in Appeal by a Zilla Judge entitles the Respondent, (if Plaintiff in the lower Court) to interest between dates of the two Decrees.

Earrings; 1 large Diamond; 1 small one; and a Gold Box, to the value of Rupees 783-2-0, and having received Rupees 300, delivered his Bill for the Balance, on the 9th February 1817, on which Respondent endorsed in English in his own hand, "Rupees 453-2-0, Balance due." Appellant got this explained to him, and asked Respondent the meaning of it. By dunning he had since recovered Rupees 300 more, leaving a Balance of Rupees 183-2-0, and this with interest Rupees 36 made the sum for which he now sued.

Respondent said he cut Rupees 30 from the Bill because he thought it an overcharge considering the value of the things, the price of which he added had never been regularly fixed. He then entered into an explanation to shew that Appellant had only Rupees 53-2-0, now due to him, and could not charge interest, as it was not agreed upon.

Receipts were exhibited, and witnesses called, on both sides, and the Court observed, that as the whole transactions had been conducted through Madame Monté, who had proved payment by herself to Appellant of Rupees 600, exhibiting the receipts for that sum only, Respondent could receive deduction for no payments made by himself, unless he had receipts for more, because it was to be supposed that he would have made all his payments in the same way, and in fact the payment of Rupees 100 more, which he brought a witness to prove, corresponded so nearly in date with one of the receipts exhibited by Madame Monté, that it was to be believed, for any thing Respondent had shewn to the contrary, to be one and the same payment, the more so that the witness was in Respondent's employ. With respect to Respondent's excuse for cutting the Bill, it was quite inadmissible, since, if he did not approve of its amount, he should have given back the Jewels instead of signing the Bill, and his putting down a lower sum was extremely improper. From the evidence of some of the witnesses, it appeared that it was not usual in Surat to charge interest for one or two months after

after delivery of goods, whether interest were agreed for or not, and that if paid for within that time, a charge for interest would not be allowed.

The Court therefore allowed interest to go on from two months after date of delivery, till date of this decree, and awarded to Appellant the sum of Rupees 220-2-0 to which his demand thus amounted at the rate of 9 per Cent per annum interest.

Nov. 1818.

Respondent on the 29th December, appealed to the Judge, who seeing no reason for interfering with the Register's decision, affirmed it.

In Appeal before Judge, G. W. Anderson, Judge. Decree 12th March 1822.

The object of Appellant in further agitating the cause which he had got so far settled, was to recover interest also on the debt from the date of the Register's Decree to that of the Judge's decision in Appeal, which amounted to Rupees 90, and this sum he prayed might be granted him, explaining on being questioned, that interest was not mentioned at the passing of the Decree but he had on recollecting the omission moved the Zilla Judge a few days after to grant it, but his request was not complied with.

Special Appeal Sitting Judge, J. Sutherland, Second Judge.

The Sitting Judge observed that Section 26th of Regulation 5th of 1820 was applicable to the present case, and would have operated in Appellant's favor, had he taken advantage of it at the time, but if a party entitled to interest neglected to claim it, the omission of the Court should go against him, and he therefore did not conceive the Sudur Udalut called upon under these circumstances to rectify the Judge's Decree, and was in favor of throwing out the Appeal, but as it would be satisfactory to have the decision of a full Court on the Question, it was referred for the purpose.

The Judges observed, that the letter of the Regulation quoted by the second Judge, did not impose upon a Respondent, in whose favor a Decree might be affirmed, the duty of distinctly demanding interest on the sum receivable by him under the Decree,

Competent Court, J. Romer, Chief Judge. E. Trouside, Third Judge.

Decree, neither did the spirit of the law require it, for his general pleading requesting that the original Decree in his favor might be affirmed, also included the demand that the Court would do all allowable acts in his favor, that the law might have provided. The Zilla Judge, on discovering the omission of not granting interest on the Register's Decree, might have regularly completed his judgment by making the necessary addition to the Decree, but appeared to have thought it better to leave the party to a special Appeal. There was no doubt on the mind of the Court that under the circumstances of the case the Sudur Udalut was bound to relieve the Appellant, for the manifest intention of the Section quoted was to check unfounded Appeals by making the original Decree payable with a heavy rate of interest during the time the cause remained undecided, and as Appellant had committed no fault which should deprive him of this benefit, the Court, so far could not concur in the opinion of the second Judge, and decreed, that the decision of the Zilla Judge of Surat, should be amended, by awarding to Appellant interest at the rate of 12 per cent per annum, on the amount of the Register's Decree from its date 23d November 1818 until such amount with its interest should have been discharged, and granting Appellant his Costs in the Sudur Udalut.

Decree 25th July 1822.

No. 67.

BAPOOJEE RUGHOONATH, Patel of Sirgaon,..... } *Appellant,*

versus

SINWAR KANA, and 31 others, Fishermen of the said village,..... } *Respondents.*

North Konkan Udalut, A. Bell, *Register.*

THE Suit was filed by Appellant on the 3d October 1820. He laid his damages at Rupees 640 suing at that value, to prove

prove his right to a Huq of 1 Rupee per Fishing Boat from every fisherman in the village, payable to himself annually as Patel, but withheld by Respondents for the last two years. He reserved his right to sue thereafter for other Huqs of his Patelkee in levying which he was resisted by Respondents.

Claim by the Patel of Sirgaon, North Konkun, for a Huq or Fee of one Rupee per annum from each fishing Boat in the village.
Dismissed in proof that the Huq belonged to Government, not to the Patel.

Respondents denied that any right was possessed by Appellant to levy any such Huq from them, or that they had ever paid it willingly. He held the Moamlut of Sirgaon under the former Government, and took advantage of his power to levy it then from the Boat Owners till Subba Ashur, A. D. 1817, when Balajee Ramchundur Ubhyunkur succeeded him in the Moamlut, and finding this Huq established under the name of Surkar Sheo, he continued it, and it was still levied by the Officers of the Honorable Company. Their defence in this Suit therefore was that Appellant, as Patel, had no right to claim as his own Huq what he had allowed to be carried to the credit of both the former and present Governments.

Appellant replied that the Huq sued for had been levied by himself and his fathers for many generations, and the account given by Respondents of its origin was totally false, though the fact of his having levied it as admitted by them, must satisfy the Court of his title still to do so, for they did not pretend to have made any complaint to the former Government of its being an undue exaction.

Respondents still held that the Huq did not belong to Appellant, but to Government. The way in which it was first imposed, had nothing to do with the present point at issue, the Appellant's right to it.

Twenty three of the Respondents afterwards gave in a Paper, acknowledging the Appellant's right to the Huq in dispute, and agreeing to pay it him henceforward without demur, leaving the other nine persons, four of whom belonged to another Creek called Koorun Khare, to fight the matter as they pleased, since they would not join them in this agreement. They therein declared

clared themselves ready to pay the Huq as their fathers had done, and begged Appellant to give in a Razeenamu.

Appellant handed up an Extract from his Day Book, from 1733 to 1740, shewing payments of the Fee during that time by all the Respondents, who opposed to it an Extract from the Dufturs of the Purgunna, including those of the old Government, shewing a Credit for the amount of Sheo Huq, for the years Subba, Summan and Tissa Ashur, A. D. 1817, 18 and 19.

Two persons, who were employed under the former Government in the Muhim district, in which Sirgaon is situated, deposed most positively, that since Subba Ashur the amount of this Huq had been carried to the account of Government.

The third witness, the Moamlutdar who succeeded Appellant ... that year, proved that Government always received credit for this Huq, adding that many changes were introduced by Appellant whilst he held the Moamlut which he did for some years. When witness took charge, Appellant wanted him to give up the amount of the Huq for the former year, but he would not agree to it, and it appeared that the neighbouring Patels were assembled to give evidence on the subject of the Huq in Subba Ashur, when it was fixed as at present established.

From the Statement taken in Subba Ashur from the Patels, which was exhibited, it appeared that for four or five years of Appellant's administration of the Revenues, nothing at all was levied. Then for two or three years he took from half to a whole maund of Fish from each boat. Two maunds per boat were then fixed, and commuted for half a Rupee. A year or two afterwards, five hundred Bombeel (Bummeloes) were levied, and commuted in like manner for half a Rupee more, making one Rupee, which was thenceforward taken as the Huq, commencing about Ashur, or A. D. 1810.

Dado Oondeer Patel, and Bhika, Mookadum of the Moossul-

mar.

man inhabitants, proved that Appellant received the Huq for about 17 years, but they could not say whether on his own account or for Government. In other respects they agreed with the foregoing witnesses.

The Court held that Appellant had not established his claim to the Huq in question, for it had been proved that the Huq had been regularly collected and carried to the account of the Government. The statement given in by twenty three of the Respondents appeared to be nothing more than an acknowledgment that they had been in the habit of paying the Sheo Huq.

Appellant was therefore nonsuited, with all Costs. Decree 31st Jan. 1822.

The Court's view of the case was, that this fee had been paid to Government, sometimes through the medium of the Kumavisdar; sometimes through the less direct medium of the Patel, and had sometimes been paid to the Patel himself. The Zilla Court had decided that the Patel had no personal right to this collection, in which opinion the Sitting Judge concurred, and affirmed his Decree against Appellant with Costs. Decree 19th August 1822.

Sudur Udalut, *Sitting Judge*, T. Barnard, *Fourth Judge*.

N° 68.

DUYAL CHUTOORDAS,.....*APPELLANT*

VERSUS

JUGHUR GOVINDDAS,.....*RESPONDENT*.

THIS Suit was filed on the 30th June 1821, by Appellant in the amount of Rupees 1,595, being the value of half a house, and damages incurred by the attachment of it by Respondent. Appellant included in the amount of this action, his own character, a store of grain, a Decree in his favor against

North Konkun Udalut, E.H. Baillie, *Acting Judge*.

against a debtor, his Books of account from 1858 till 1877, Sundries, Cloths, a debt against another person, and one room of this house, the other being admitted to belong to Respondent.

Claim by Appellant for removal of an attachment laid by Respondent on Appellant's house in execution of a Decree against Appellant's Brother.

Attachment confirmed by the Zilla Court, from want of proof by Appellant, of Separation from his brother and of his title generally.

Attachment annulled by the Sudur Udalut from want of proof by Respondent of Brother's unity of interests.

Respondent said, he had obtained a Decree in the Register's Court against Appellant's own Brother Munohur Chutoordas, for Rupees 365-0-23, besides Costs, on the 9th May 1821. In execution of this Decree he got the house attached, when Appellant filed a suit against him for the same amount as in the present one, which was dismissed, with Costs against Appellant. The present action was therefore not maintainable as having been already heard and determined. It was moreover ill laid, because he and his brother were united, and it should have been in the name of both, or neither. Munohur Chutoordas was in Jail, and further execution could only be had on his Effects, wherefore he prayed the attachment might be sustained.

Appellant, who appeared by Wukeel, pleaded that he himself was still a minor, unmarried, and his Brother Munohur had taken care of him and managed their affairs, but as they were not a joint family, Appellant being only under the guardianship of his Brother, the debts of the latter could not be levied from this house, which he himself bought, and his brother had no interest in it. The Suit alluded to by Respondent was not tried on its merits but dismissed at once as ill laid, because it was against all parties engaged in the attachment; and another attachment laid upon the premises by Prankoonwur Baee, one of Munohur's Creditors, had been already removed by an order of Court.

Respondent in rejoinder denied this statement to be true, and then added, that out of four brothers, two were dead, but the Estate had been acquired whilst all four were living, and they had never separated to that day. It was Appellant's part therefore at any rate to prove that such separation of interests had

taken

taken place between him and his three brothers as would except his share of the family estate from the present execution, whilst he himself was ready to prove that Appellant was engaged in settling their affairs after their bankruptcy.

The Judgment obtained by Respondent was on a Suit against Munohur Chutoordas alone, for the amount balance of a Book debt, on the 9th May 1821.

The Defendant in that Suit had casually made mention therein of a Rent Bond he had passed to Duyaldas Chutoordas (Appellant) on taking a Lease of his house, and Appellant now, in order to prove that his interests were quite distinct from those of his Brother, exhibited that Rent Bond dated 13th Chytur Vud A. S. 1868, or 9th April 1812, together with an agreement from his next neighbour, dated 3d Vyshak Sood A. S. 1855, agreeing to block up, whenever Appellant required, a door which the latter had permitted him to open. Also a Deed of Sale by one Girdhur Jeevundas of this House in Appellant's name.

The Decree in the former Suit, filed by Appellant against four persons for the same cause of action as the present, shewed that his suit was dismissed because ill laid as against four persons jointly when their attachments were separate, laid by each under his own Decree against Munohur.

The only witness called in the case, named Govind Nagur, a Suraff, proved that the original shop was established about 15 years before by Appellant, the eldest Brother, under his own name of Dayal Chutoordas, and he and his Brother had lived together for the last thirty years. Respondent quoted the precedent of Lukshumun Seth Sarungdhur versus Ruza Fureed, and Jaeeram Sudaseo already reported as No. 10.

The Plaint, answer and Decree, in a suit filed by Munohur Chutoordas against a person for rent, were also exhibited to shew that Munohur having been held competent to sue for and

recover

recover the rent, and possession, of the house, the subject of the present dispute, the facts upon which that Decree was given must be taken both for and against him, and that his brother Appellant could not now step forward to shield the house from being responsible for him, after allowing him to recover its rent without putting in his own claim.

The Court thought that each party had failed in proving whether Appellant and his brothers had separated, or were still united, but as Appellant had failed generally to prove the goodness of his claim, his suit was dismissed with Costs.

Decree 19th Jan. 1822.

Sudur Udalut, T. Barnard, *Fourth Judge.*

The Sitting Judge remarked that it was admitted on both sides, that the purchase was made in Appellant's name alone, as the Deed of Sale also proved. Respondent had maintained that the purchase was made really by all the brothers jointly, though in Appellant's name.

It was held, that the Deed's being drawn out in Appellant's name was sufficient presumption of his being the proprietor, to throw the onus probandi of the contrary on Respondent; this had not yet been done, but he proposed to do it by inferences to be drawn from the connexion of dealings in general between the brothers. This would under certain circumstances give them all a common interest in their property, but these circumstances remained to be proved and were not of a nature very susceptible of proof. In fact the most prominent feature in the case, the origin of the present action, viz. the suit instituted against Munohur without including Appellant, directly contradicted the only principle on which Respondent could support his claim. As there existed in the Deed of Purchase a direct proof in favor of Appellant, and no grounds appeared for the Zilla Court's decision in favor of Respondent, the case was referred for reversal of the Decree to a competent Court.

Competent Court, J. Romer, *Chief Judge.* E. Ironside, *Third Judge.*

The Court agreed in opinion with the fourth Judge, that no proof had been established that the Brother of Appellant Munohur

nohur had any share or proprietary right in the house which Respondent had attached. On the contrary the Deed of Sale was in the name of Appellant alone, who must be deemed to be the sole proprietor unless any thing could be shewn to the contrary, which Respondent had failed to do. On these grounds the Zilla Judge's decision was reversed, and the attachment laid by Respondent ordered to be removed. The Court finding no grounds for awarding damages to Appellant, half his Costs in both Courts only were awarded to him from Respondent, who was adjudged to bear all his own also.

Decree 8th August 1822.

N°. 69.

MOORAR KHOOSHAL,.....APPELLANT,

VERSUS

MT. LUKMEE, Widow of BEHCHUR MITHA SOOTAR,..... } *RESPONDENT.*

Ahmudabad Udalut, Chas. Norris, *Register.* Sootar Cast.

THIS suit was originally filed by Respondent on the 20th December 1819, to recover from him Rupees 281-2-0 value of her Pulla ornaments. She said that on the 4th Kartik Sood A. S. 1869 her husband died, and on the fourteenth day after his decease, Appellant, who had some influence with the Gaeekowar's Government, sat in Langna or Dunning at her house, and thereby compelled her to give up her Pulla. She said he was neither of her family nor Cast, and could have no possible claim against her for her Pulla as every woman is mistress of her own Dower.

In the case of a Cast compelling the widow of a person deceased, at the instance of his relations to give up her Dower Jewels to be appropriated to his funeral expenses, the widow sued only one member of the Body, and her Claim was dismissed by the Register as not affecting Appellant, but admitted by the Zilla Judge to

Appellant said that Respondent never gave any Ornaments into the care of himself alone, but to a Punchayut of the Cast, who went to her house to recover them. Her demand should therefore have been preferred against the Cast as a body, not against him as an individual, seeing that he was present at the

be good, because the Jewels were put into Appellant's hands. Sudur Udalut held Appellant to be only agent for the Cast, and reversed the Zilla Judge's Decree against him.

the delivery of the ornaments only as a member of the body of the Cast.

Respondent replied, that it could not be considered the Act of the Cast, unless their Agent in all public matters, the Nyat Gour, had come to demand, and had received, them. But so far from this, she would prove that Appellant himself sat in Langna to obtain the Pulla, which was her only means of subsistence.

Appellant explained in rejoinder that for a whole month after the death of Respondent's husband no funeral ceremonies were performed in his honor. The non-celebration of ceremonies was considered in their Cast as a very disgraceful thing, and for this reason Juvehur the other widow, and the two surviving Brothers of the deceased, attended a Cast meeting which happened then to be sitting at another house, complained that Respondent had kept possession of all the ornaments of the family, and prayed them to call upon her in a body and make her deliver them up, that they might perform the funeral. The Cast, with the Gour among them, went and sat before the door, on which she gave up the ornaments to the Cast, which put them into the hands of Juvehur. She and her two brothers-in-law then returned them to the Cast begging that they would themselves dispose of them, and provide themselves a Feast. They did so and were fed for two days with the proceeds. This being the case no claim could possibly lie against him.

Baee Juvehur deposed that her late husband about 11 months before he married Respondent, beat witness, and took away from her all her ornaments. He married Respondent in the month of Ashad A. S. 1868, or July 1812, and died in the Kartik following. About two months afterwards, her Brothers-in-law give her own ornaments, which had hitherto been in Respondent's possession, to her, and she asked them to feast the Cast with them, which they did. One ornament only

was

was retained, and it went in payment of a debt. Her brothers-in-law had separated from her husband.

Five members of the Cast deposed that Respondent's own Brother took the ornaments from Respondent, and gave them to Appellant in presence of the Cast who were assembled at Respondent's house, and had a dispute there about them. One of them guessed the expense of the Feast made for the Cast to be about Rupees 140.

From this evidence the Court decided that Respondent had no demand upon Appellant, even if the ornaments did belong to her, since he did not snatch away the ornaments from her but they were taken by her own brother from her, on a demand of the Cast, and given up to the Cast. Her suit was therefore dismissed with Costs.

Decree 21st April 1820.

Respondent gave as a reason for appealing, in the Judge's Court, that she could prove the ornaments never to have reached the Cast, and as Appellant was proved to have received them, he should have been made accountable.

Judge's Court in Appeal, W. A. Jones, *Judge*.

The Court found from the proceedings of the lower Court, that the Pulla of Respondent certainly was put into the hands of Appellant by whom its appropriation was not satisfactorily explained. The Register's Decree was therefore reversed, and the ornaments or their value, fixed at Rupees 281-2-0 decreed to be paid by Appellant to Respondent with her Costs in both Courts.

Decree 20th Dec. 1822.

The Sitting Judge observed on this case that the Question immediately at issue was whether Appellant or the Cast was responsible; for he had pleaded that the ornaments were delivered to the Cast to be employed for a Cast purpose. Another Question might afterwards arise whether the Cast had any right to sell or dispose of the property, but the Register and Judge had differed about the first, the former considering the Delivery as made to the Cast through the agency of Appellant, the latter holding

Sudur Udalut, Special Appeal, *Sitting Judge*. T. Barnard, *Fourth Judge*.

holding Appellant personally responsible. The Sitting Judge felt little difficulty in concurring with the Register's deductions, for if any one could be made responsible for property given up and expended, as that in question, it was evident that Respondent's own Brother was an agent between Respondent and Appellant, who again was agent for the Cast. Now if agency was to be considered as creating Responsibility, the claim of Respondent was against the agent who took up the matter immediately from herself, viz her Brother. If the ultimate disposal of the property were to be the Rule, then the Cast was responsible. This view of the case was referred for the decision of a Competent Court.

Competent Court, J. Romer, *Chief Judge.* E. Ironside, *Third Judge.* Decree 5th Sept. 1822.

Which reversed the decree of the Judge's Court, and affirmed that of the Register, awarding Appellant his Costs in all the Courts.

No. 70.

MEEYA NAGUR.....APPELLANT,

VERSUS

BHAEEDAS BHOOKUNDAS and GOVIND GOSAEEN..... } *RESPONDENTS.*

Surat Udalut, J. Vibart, *Register.*

Action filed to set aside a sale of a house on the ground of a right of pre-emption being vested in Appellant by a deed of conditional sale, the mortgage having been redeemed. Proof of mortgage wanting.

APPELLANT first sued Respondents in the Zilla Court of Surat, to recover Rupees 800 as damages incurred by him in consequence of the first Respondent having sold a house of his in the town of Bulsar to the second Respondent, and thereby broken an engagement he lay under to Appellant, the mortgagee of the same house, to give him the refusal of it whenever sold, a right of pre-emption being vested in Appellant by the terms of the Bond.

Respondents declared that no engagement of the kind ever existed with Appellant.

When

When the Court called on Appellant to produce the Mortgage Bond in proof of this agreement, he said he had given it to one Anundram who was in league with Respondents, but he had a Copy of it which he begged might be received in evidence. After an unsatisfactory examination of Appellant, the Court decided, that as Appellant was unable to produce the original mortgage Bond on which his claim entirely rested, and as the Copy he wished to exhibit, which was by him admitted to be unauthenticated, could not properly be admitted in evidence, his claim was dismissed, reserving to him the right to sue Anundram for recovery of the original Bond should it really have been intrusted to him.

and Sudur Udalut decreed that Redemption of the mortgage annulled it and all its conditions, even if a bonâ fide transaction.

Appellant pleaded in the Sudur Udalut that the house was redeemed from him under another Decree of the Surat Udalut, and though the original Deed was thereupon given up and cancelled, yet the Copy taken by his friends ought to be received as evidence of it. He did not exhibit the Decree alluded to.

Sudur Udalut, *Sitting Judge*, *v.* Sutherland, *Second Judge*.

The Court observed, that the first point for consideration was the right of Appellant to interfere with the Respondent Bhaeedas, in selling his house to whomsoever he chose. The Court held that Appellant from his own shewing did not possess this right now, even if he did while the mortgage he held was unredeemed. The clause under which he claimed had formed a part of the conditions of the mortgage Bond. This Deed he surrendered on Respondent's having satisfied him, and redeemed the house, and with this surrender went all the engagements between the parties. Consequently Appellant could have no remaining right to molest Respondent Bhaeedas in alienating the house in any manner, and to whomsoever he thought proper. The nonsuit passed by the Surat Register was therefore Affirmed against Appellant with Costs.

Decree 5th August 1822.

No. 71.

N° 71

RAM SINGH GUJ SINGH.....*APPELLANT.*

VERSUS

UBHE SINGH GUJ SINGH.....*RESPONDENT.*

Ahmedabad Udalut, W. C. Jones, *Judge*. Puggee Case.

RESPONDENT filed this Suit against Appellant on the 14th June 1819 to recover the sum of Rupees 2,493-1-0 amount of a loss incurred by a Robbery, which loss Appellant, as Head of the Village to which the robbers were traced, was bound by the Custom of the Country, to make good to Respondent, who stated himself to be an inhabitant of the Village of Koth in the Dholka Purgunna, and Appellant, Thakoor of Gangur in the same. On the night of 14th Posh Vud last, or 25th January 1819, Respondent's house in Koth was broken into, and he was soon after informed of it by the disturbance made, but the thieves had fled on the noise. He immediately sent for the Puggee, the Village Tracer of footsteps, and that person traced those of the robbers near to the village of Gangur. Respondent on learning this sent his people to inform Appellant that the Pugla, the "Trace," or Footsteps had been carried within his boundary, and to beg of him to take it up as usual, and trace it forward. This Appellant did by his own Puggee, who took up the Pugla and traced it by many marks for some distance all about, but not in advance. Having thus satisfied Appellant of the trace, Respondent's people returned, and Respondent gave information to the magistrate, who having heard Appellant's story told Respondent to apply to the Court. This he now did, giving a List of the property and things stolen chiefly women's ornaments. Among them were enumerated the following,

A Chandlas, or ornament like a wafer, fixed on the forehead between the eyes, and with rich people made of Gold set with small precious stones, valued at Rupees..... 21

Respondent the head of a village claimed from Appellant the Thakoor of a neighbouring one by the custom of the country remuneration in consequence of thieves flying from Respondent's village and being traced into that of Appellant.

Zilla Court decreed as sued for, but the Sudur Udalut reversed the Decree, finding the Trace not regularly proved.

A Talisman (Taveet) and its Box (Maduleea) of Gold, Rupees..... 75

Joomna, A Gold net for the head, Rupees..... 509

A Neeklace, (Cheen,) and Gold thread made to imitate the Brahminical thread, Rupees..... 625

A pair of Gold ear-rings (Totee), Rupees..... 181

And the drops (Lola) Rupees..... 21

A Gold jewelled nose-ring, Rupees..... 75

Six Cheep Choora, broad armlets inlaid with Gold, Rs. 101

Jal, a small net (made of Gold thread set with Pearls at every knot, and worn over the ear), Rupees..... 101

Respondent said he had kept the iron spike with which the robbers dug their way, and had lately recovered one of the broad bands for the Arms (cheep Choora) stolen from him, which was found about two months before in a tank in Appellant's village.

Appellant answered that the enmity subsisting between himself and Respondent was notorious to the whole country, and it was caused by Respondent's envy at his having succeeded as Eldest son to the inheritance and Honors of their father. Respondent had certainly pretended to trace the Pugla to his village, but the trace had never been satisfactorily proved to have been found within the village itself. The story of finding the Choora or armlet, in the tank, was false even by Respondent's own account, for the traces did not lie in the direction of the Tank where it was said to have been found, and the armlet had been thrown in by some of Respondent's people, who easily found it again when they wanted it to support their story. The Pugla was not followed up until near half past ten o'clock in the day, though the robbery was said to have taken place at night, and the two villages were only three Koss apart.

Respondent remarked upon Appellant's admission of the two facts on which his claim rested, the tracing of the Pugla, and finding of part of the property, within his village. The trace

was

was actually brought by day break, to Appellant's village, instead of late in the day, as he said. The Court would also consider that Appellant had confessed himself to bear enmity to Respondent, which sufficiently explained his motive for refusing to acknowledge the trace. The armlet was found in the hands of some children who wanted to sell it, and it was recognized, though the Gold was torn off, and the children confessed they had found it in the tank.

Appellant said in rejoinder he would prove that a Box forming part of the property stolen (but not mentioned in the list) was found on the same day in a direction quite contrary to his village in Koth itself, by a Chokee of Mewassees, in the face of which Respondent had gone towards his village for the trace, which he still declared was a false one.

The Proceedings of the Magistrate were called for, but shewed no more than that Appellant had given anwer to the complaint exactly similar to his present pleadings, and the parties were without further proceedings referred to the Civil Court.

Wukta Joga, the Puggee of Koth, deposed that he resided generally at Suredee, (as it is usual for one Puggee to act as such for two or more villages) but was on duty at Koth about two years ago in the month of Posh. He was roused from sleep in the middle of the night by one of Respondent's people, taken to his house, and shewn the hole made by the thieves in the wall. He took up the Traces of three men, and followed them to a low wood to the westward of Koth. Going on in that direction, but following the doublings of the Pugla, he was led to the cross-road that led to Roheeka Bugodra, and in that direction it seemed to proceed. He asked Respondent, who was with him, to get some Horsemen from the village, and when they came the Pugla was carried forward from about two Koss distant from Koth to within two Gunshots of the village of Gangur, and within its boundary. The Gangur Puggee came, took

up

up the Pugla and carried it on, witness remaining where he was until sent for by the other, who shewed him where the Pugla was traced on to the road to Kesurdee. But witness was of opinion that this was not the Pugla of three men which he had made over for further trace to the Gangur Puggee. The other said it was, and they disputed the point. They were carried to the Gangur Durbar, (Appellant's) and every body returned with them to the spot were the Gangur Puggee took up the Trace. They all went on the road to Kesurdee, where Appellant's Karbaree, Ummur Singh, remarked that the two traces did not tally, and the business was then broken off.—On examination witness said he did not take up the trace from the Respondent's house, but from a stack of grass in the compound. It was about 8 o'clock when they reached Gangur, and he explained the delay by saying that having set out on the trace about midnight, they followed it by torch light till, finding that the Pugla went to Gangur, witness remembered their dispute, and thought it as well to go over the ground again, so he set out afresh with two torches from Respondent's house. Witness knew nothing about the Box. The Pugla did not go direct into the village of Gangur, but within 50 paces of it, and it was about two Gunshots from that spot to the cross road of Kesurdee; the village of Gangur lay directly between the two spots, but there was a road through the fields outside the village, and it was by the latter road that the Gangur Puggee followed the Pugla. The Pugla shewn to him on the Kesurdee road was that of one man wearing a low heeled (or flat soled) shoe, by which he knew it not to be the same.

Wahala Bhawa, the Gangur Puggee, admitted that the above witness delivered over to him, after nine o'clock, the traces of two persons, at about a Gunshot distant from Gangur, whence he followed them on the road to Kesurdee, and pointed them out to the other Puggee, leading on in the same direction. The dispute broke off further search. Witness was certain that those on the Kesurdee road were the same as the traces he had taken up opposite the Gate of Gangur.

Phooljee

Phooljee Soojajee stated that he saw the Footsteps of three persons, one of which only had the mark of a shoe.

Purtabjee Morjee also saw three footsteps, two having marks of shoes, the third without.

Ulee Bhaee Meean Bhaee said the Puggee of Koth brought the Traces at about 8 o'clock, to within a Gunshot of Gangur and the other Puggee followed it up to the Kesurdee road, where the dispute took place; and the people of each village, after a further dispute at the spot first pointed out, separated to their homes. This witness said none of the footsteps, which were in number three, bore marks of shoes, but that found at the Kesurdee road, was marked with a shoe without a heel.

Vehura Umursingh, servant of the Thakoor of Gangur, (Appellant) said he went out at the summons of the Koth people, and saw the Pugla of one man, which the Gangur Puggee pointed out leading to the Kesurdee road. Witness did not see the original Pugla, and being asked whether the Gangur Puggee would have taken up a trace of which he was not satisfied, said he was bound by his duty to go when called upon, and he had declared that it was the same which he had taken up. That which witness saw was without a heel-mark.

Jussa Poonja, a servant of Respondent, said that about six months before he saw two men and a boy disputing in Gangur, about selling an Armlet and dividing the money; witness asked to see it, recognized it as that of Respondent's Wife, and obliged them to give it up by threatening them with a complaint if they did not. Witness asked the Respondent's wife if she would recognize her Armlets and she said one pair was of blackwood, so he gave them to her.

Appellant endeavored to prove the finding of the Box within the Mewas of Koth.

Jugmal Hureedas said he followed the Crowd and saw the traces

traces of three presons taken up by the Gangur Puggee and carried on to the Kesurdee road. On returning home to Koth witness saw some of his neighbours carrying a Box which they found in the low wood surrounding the village. Witness had learnt some information from Jeeva Mochee, which induced him to offer himself as a Morkhaya (one who sells for ready money or valuable consideration information to be afterwards acted on, leading to the recovery of stolen property or apprehension of robbers) to Behchur Jaeeraj. Behchur wrote him a note for Rupees 100, which he gave to the Mochee.

The Mochee was not forthcoming, but Behchur admitted what related to him was true. Appellant however failed to corroborate Jugmal's Evidence about the box, as the persons whom he called denied all knowledge of it.

Soorsingh, a servant of Respondent deposed to the robbery and to the Puggee's having taken up the traces and followed them. He stated every thing exactly in the manner as the Puggee had stated. Witness said that the Pugla was not distinguishable at the place where the thieves broke in, because of some grass lying there, but the Pugla was taken up from a room just beyond that Grass.

Appellant then offered to prove that Respondent had recovered the stolen property. The witnesses he called denied it, and the Court did not allow him to shew that these persons had told a different story out of Court, because it was not right to take their evidence as to what they heard, and Appellant admitted he had no proof of the fact.

The Court closed the proceedings by admitting Respondent to swear to the truth of his petition, and then summed up the case thus.

Respondent sued for the value of property stolen from his house. The footmarks (of the thieves) were proved to have been traced to Gangur. Appellant declared that the stolen property

petty had been restored to Respondent; but the persons whom he called to prove it, declared they knew nothing of the matter. Respondent having been sworn to the truth of his petition, the Court felt itself compelled to decree to him the amount sued for, with his Costs, from Appellant.

Decree 24th Jan. 1822.

Sudur Udalut, *Sitting Judge.* J. Sutherland, *Second Judge.*

Appellant, besides his objections to the original suit, further urged, that not one witness had deposed that the traces did not lead out of the grounds of Gangur village, nor had one of them positively stated that the Trace or Pugla was traced into Gangur village, whilst in fact it was traced to the mewas of Respondent's own village, and shifted upon Gangur from enmity. That the custom of the country required the Pugla to be taken direct to the village, on which the first tracers would give over the trace to that village, and return home. But as thousands of persons traversed the fields within the village boundary, the first Tracers were not justified by custom in only tracing the Pugla through the fields, and then returning, and that the village could not in such case be responsible, because roads from other villages lay through their fields. Moreover that the testimony of the witnesses was false on the face of it, from the particular description they had given, after two years' remembrance, of the Footsteps, whether marked with square heeled shoes, or without heels, and only a strip of leather.

The Sitting Judge considered it very necessary to view the matter most strictly against the claimant, since cases of this description would bear very hard upon a village if the members were innocent of the robbery for which remuneration was sought. He also remarked upon the avowed enmity of the parties, and held that with the exception of the Oath of Respondent there was no sort of proof of the robbery having taken place. Respondent left the case to go on as it stood, without offering proof of the robbery. Cases of Jhootha Pugla, or Fictitious Traces of a robbery, were not unknown, and it was therefore of importance to find every circumstance carefully

set

set forth. In this case, no information was laid before the local Police Officer, and not even before the Magistrate for two months and a half afterwards. Respondent had in that information stated that he was informed of the robbery in the morning, whereas in his Plaint he said the Puggee set out immediately. The story of the armlet had no evidence to support it, for the persons who found it were not called, and it had not been produced.

The Sitting Judge recorded his opinion that the Decree of the lower Court should be reversed, and referred the case for that purpose to a competent Court.

Competent Court. J. Romer, *Chief Judge*, T. Barnard, *Fourth Judge*.

The Court agreeing generally in the view of the Second Judge, that the evidence adduced was not sufficient to prove that the Footsteps of the Thieves were traced to Appellant's village, nor that property to the extent laid in the petition was stolen, reversed the decision of the Zilla Judge, thereby relieving Appellant from all responsibility for the stolen property, and granting him all his Costs.

Decree 15th August 1822.

N°. 72.

TREEKUMJEE LALJEE.....*APPELLANT*,

VERSUS

Mr. LAROO, and FUKEER RUNCHHOR..*RESPONDENTS*.

Surat Udalut, J. Kentish, *Register*.

APPELLANT on the 28th August 1821, filed this claim against Respondents, stating, that he betrothed his own Nephew Brijlal Jugdeesh to Respondent Laroo, as a second wife, and gave her ornaments in Dower to the value of Rupees 597-2-0. They lived together for two years till the husband went on a pilgrimage and died about a month ago. Respondent Laroo was married again to one Trikum Nagur, but she had not returned the Dower of her former marriage to him, nor taken an acquittance

Claim by Appellant for recovery from Respondent in consequence of her second marriage, of a room in a House.

and of the Dower given by Appellant's nephew, her first husband, deceased about 33 years before.

Disputed by Respondent on plea of separation between Appellant and her father-in-law, and of the limitation of time.

Separation held not to have taken place, and Possession of the room decreed to Appellant. Liability of a widow to return the Dower of her first marriage on contracting a second admitted, but the present Claim dismissed for want of proof, and under the Statute of limitation.

Sudur Udalut held the Statute of limitations not to apply, but dismissed the Appeal also for want of proof.

tance from him, as usual on such occasions. Besides, she had locked up a room in his house; and in consequence of this, he sued her to recover the Dower Jewels, and the room, which he valued at Rupees 200 making Rupees 797-2-0 total amount of his claim. He had included Fukeer Runchhor in the Suit because Laroo referred to his having passed her an acquittance, for what reason he knew not.

Respondent said 33 years had elapsed since her marriage with Brijlal, whose mother was then alive, and paid the expenses of the marriage. They three lived together with the property in common, whilst Appellant was separated from them, and had nothing to do with the funeral expenses of her mother-in-law which Respondent and her husband alone defrayed. Her husband died about 3 years ago, and she had defrayed his funeral with money borrowed for the purpose. It was well known that where an Uncle and Nephew did not hold joint property, the Widow of the Nephew would succeed to his property as sole Mistress of it, and the same in respect to Brothers or Cousins. Respondent Fukeer, was the cousin of her late husband, and she had bequeathed the room, which her husband had possessed in his own right in the house with her other Effects, to him by Will, when she married again. She denied the claim for the Dower, and demanded, if Respondent had any claim, why he had not sued long before, seeing she had been married 33 years.

Respondent Fukeer Runchhor answered on his part that the will of Laroo in his favor was in his possession, and upon that he rested his defence, conceiving it a valid document to all intents and purposes.

Appellant persisted that the father of Brijlal and himself never separated, and that he had constituted Brijlal his heir, and brought him up, celebrating both his first and second marriage at his own expense. He admitted that he could have no claim against Respondent Laroo for her Dower, so long as she remained a Widow, but the cause of action arose when she married

again,

again, and not before. Laroo had no right to make a Will, because a separation had never taken place, proof of which lay in her still having this room in the house.

From the witnesses it appeared that there were four Brothers, Goolaldas, Jugdish, (the Father of Brijlal) Trikum and Runchhor, which last separated from the rest. The house had three rooms and was common to all, but Brijlal had the room in question for his family, so that each of the three Brothers had a room, but the other two kept their's in common. Appellant and Respondent's husband, Brijlal, quarrelled about the share left by Goolaldas, whose Nephew Govurdhun claimed it from Appellant, but was opposed in obtaining it by Brijlal. Laroo paid her husband's funeral charges. They mentioned that there was another house also belonging to the Grandfather, Laljee, at Domus, of which Appellant said the ground plot did not belong to them, and all declared that no separation ever took place between the three brothers.

One of the witnesses, the Seth, or Head of the Cast, exhibited two Bonds entered into by Trikum and Brijlal, agreeing to abide by the decision of two arbitrators therein named, upon their dispute for dividing the family house, which papers the witness said were given to him to keep in deposit. He deposed that a woman cannot contract a second marriage until she have received an acquittance from the Relations of her late husband, declaring that they have received their Relation's property and have no further claim upon her.

Respondents, inorder to prove their allegation of an actual separation having been made, called two witnesses, who deposed that a meeting of the Cast was held to make a separation of the family effects, but they could not speak to its having been done.

The Court held it to appear that no separation or division of the rights and properties belonging to Appellant and the late Brijlal ever occurred or took effect, notwithstanding the evidence

dence adduced on the defence to shew that they lived distinct and separate; for it was satisfactorily established that no Deed or written Document relative to the fact of separation of interests existed, and it was also in evidence that endeavors were made by the Cast to effect it but they failed. In respect to the Jewels and ornaments composing the Dower, for the recovery of which the present claim was preferred, the marriage having been contracted at so distant a period as thirty years ago it was impossible, even if the fact of the delivery of the Jewels were admitted, to determine whether they might not have been expended or lost by Mt. Laroo during the life of her former husband, Brijlal, and no proof existed of the number, value, and description, of the ornaments, whilst the transaction was of a longer period than twelve years standing. The claim for recovery of the Dower was therefore rejected as not proved, and the Appellant's right to the apartment sued for by him only, was adjudged to have been substantiated, and a Decree was passed in his favor for the apartment sued for, each party bearing their own Costs.

Decree 15th Jan. 1822.

Sudur Udalut, *Sitting Judge.* J. Sutherland, *Second Judge.*

Appellant prayed for leave to adduce further evidence in proof of non-separation, and also of receipt by Respondents of the dower, urging that if he did this, the statute of limitation would be no bar to awarding the restoration of it to him, for the reason he had urged in the lower Court

The Sitting Judge allowed two witnesses named by Appellant to be now examined, because their names were given in by Appellant though the Register had not called them up.

The first of these witnesses deposed that he was sent for about 16 months ago by one Duyaram Bawa Byragee to his house, and that he saw Respondent Laroo sitting by the Byragee with a Bag containing ornaments, and was told by the Byragee that she wished to get them sold and get a gold Necklace made with the money; and Laroo took out two ornaments, which witness named, and gave them to him, and he knowing nothing of

Jewels,

Jewels, asked the Byragee to sell them. He did not see the other ornaments in the Bag. The Byragee returned him, three days after, Rupees 304 and desired him then to go and get the Necklace made, which he did, and gave it, when ready about 20 days after, to the Byragee who put it into Laroo's hands. Laroo twenty days after complained to him that she was afraid the Byragee, who was then very ill and afterwards died, would not restore the Necklace which she had deposited with him, and begged witness to get it from him and he did so. Another person deposed that he went to Trikum's house to get some ornaments made, and Laroo coming in, asked Trikum to give an acquittance to enable her to celebrate her second marriage. Trikum said he would, after the Diwasa (festival in honor of deceased Ancestors which ends on the 30th Ashadh Vud). Witness knew no more.

Appellant then requested to be allowed to call the Chela of the Byragee, but the Court having confined itself to admitting those not called by the Zilla Court, would not grant the prayer.

The Sitting Judge held that Appellant had failed in establishing his point. To allow it to be taken for granted that whatever ornaments Laroo wore at any particular time, formed her Dowry, would be admitting too much, particularly when thirty years had elapsed since they were given, even by Appellant's admission. The application of the statute of limitation by the Register was evidently erroneous, as the cause of action did not arise until the celebration of the second marriage, by which act she legally forfeited all such Dower as she got by her first marriage, to the Heirs of her husband. But in this case no Dower belonging to the Estate of her late husband had been proved to be in the possession of Respondent Laroo, on her second marriage, therefore the Sitting Judge was for affirming the Register's decision, but preferred sending the case before a full Court, for the satisfaction of the parties.

The Judges agreeing in opinion with the Second Judge, that they

Competent Court, J. Romer Esq. Chief Judge.

T. Barnard. *Fourth Judge* Decree 15th August 1822.

they ought to affirm the Register's decision, passed a Decree dismissing Appellant's claim, and adjudging him to bear Costs.

N°. 73.

UMBARAM MUKUNDAS.....*APPELLANT*,

VERSUS

RUGHOONATH LALDAS,.....*RESPONDENT*.

Ahmudabad Udalut, D. Greenhill, *Register*.

RESPONDENT sued Appellant in the Zilla Court on the 27th September 1820, to oblige him to give up a house, situated in the Ambee Pol, of the Raeepoora of Ahmudabad, which he had bought of Respondent's neighbour in defiance of Respondent's right of pre-emption. He laid his damages at Rupees 200, stating, that the house formerly belonged to Juvehur Baee, Wife of Munsookram Bhut, and was the very next one to his own, so close that the rain water fell from it on his house, and therefore, as next door neighbour he possessed the right of pre-emption (Huq-i-Shufaut,) which was such, that no other person could take it until he had refused it. He had, on the completion of the Sale to Appellant, sued Juvehur Baee in the Udalut to get the Sale reversed, but the Register, to whose Court it was referred, told Respondent to sue the purchaser, as Juvehur Baee had expressed herself desirous, if it were left to her own will, to let Respondent have it. Thus the present action arose.

Suit by Respondent to establish his superior right of pre-emption of a House bought by Appellant.

Sale annulled by the Register's and Judge's Courts on the grounds of informality in the deed, leaving the right of pre-emption to be determined by a fresh action or the highest offer.

Sudur Udalut determined the right of pre-emption in favor of Appellant, and reversed in his favor the lower Court's Decrees.

Appellant in answer, said the sale was performed in a fair and public manner, and begged the Court to refer to the issue of two other suits by Respondent on the same subject. With reference to the Respondent's plea of near neighbourhood, his own right was equally good on that point, since his house stood next on the right hand side of that in dispute and Respondent's on the left, or north, side.

Respondent

Respondent declared that Appellant originally had a house just on the opposite side of the street to that in dispute, and that he formerly only rented the next house on the right hand, and had only bought it in the same underhand way as this one, about three years before. Respondent's right of pre-emption was still therefore paramount, as the oldest neighbour of the two. In fact, when he raised a dispute about the first sale, Juvehur Baee's nephew then promised to sell him that now in dispute, provided he would let them give up the other to Respondent, who was Juvehur Baee's disciple (Yujman) and he at that very time paid down an earnest of Rupees 56, and took a writing from them to do so.

Appellant admitted that he lived in the other house as a Tenant for 18 years; then took it in mortgage, and finally purchased it in A. S. 1873 or A. D. 1817 and had been altogether, in one way or another, her next neighbour for 55 years, which was surely equal to Respondent's title.

The Deed of Sale was dated 12th Shravun Vud A. S. 1875 or 17th August 1819, passed by Juvehur Baee, Widow of Munsookram Vyas, and by her Father-in-law, Anoopram Poornaram Vyas, to Appellant for Rupees 249. In the description of the boundaries, Respondent's, and Appellant's Father, were noted as her next neighbours on the west. On the north it was bounded by Respondent's Father's house, and on the South by that of Appellant, and the Wall of each of their houses on these two sides was declared to be a party wall.

The Court resolved to set aside the Deed of Sale as irregularly executed, because it had not been submitted to the Qazee, and because many of the witnesses lived out of the street, and very few of them in it, and of those none were Respondent's neighbours on the North, whose evidence was requisite by the custom of the City, and this custom must be upheld, otherwise all kinds of abuses would creep in. The sale was therefore annull-

ed,

ed, and an order passed for keeping the house the same as it had always stood, either until better proof should be adduced by one or other party, or until it should be settled who would give the highest price. It was argued in the Decree of one of the former Suits, that Appellant should have been included as Defendant with Juvehur Baee. This would have been as well, but as matters stood it did not now signify. All matters of damages or loss were to be considered as settled up to date of this Decree, 14th December 1820.

Judge's Court in Appeal, W. A. Jones, *Judge.*

Appellant pleaded in Appeal that the Deed could not be declared invalid merely because it wanted the Qazee's sanction, and he pointed out that Respondent's Uncle had signed it among the witnesses, and he informed the Court, that Respondent had first offered 150 Rupees for it but it was refused, and Appellant then gave the sum stated in the Deed, and completed the purchase.

Decree 8th Feb. 1822.

The Court affirmed the Decree of the Register's Court for the reasons he had assigned against a confirmation of the Sale.

Sudur Udalut, Special Appeal *Sitting Judge.* J. Romer, *Chief Judge.*

The Sitting Judge observed, that neither of the lower Courts had gone into the real merits of the case, for the question of the right of pre-emption according to the provisions of the Moohummudan Law, which was paramount in all such cases, had not been determined.

Appellant had further urged in the Sudur Udalut as grounds for reversing their decisions, that Respondent was united in interests with his elder brother Keshoor Laldas, and this action, laid in his own name alone, was not maintainable and ought to to be dismissed; that the signature of Keshoor would be found on the Deed of Sale, thereby clearly demonstrating that if he had any right of pre-emption he had virtually resigned it; Lastly that Respondent himself had, after the sale of the house, disputed with him respecting some alterations he was making, about which Respondent would not have troubled himself if his claim had then been good against the house itself.

Respondent

Respondent took no notice whatever of the Appellant's mention of his brother, but said in general terms that the Deed was surreptitiously executed and attested by Appellant's friends.

The Sitting Judge referred the case back to the Zilla Court, directing that in order to settle the first point one of the Moohummudan Law Officers should be deputed to examine the entire premises and situations of the three houses, together with such Title Deeds of them as were forthcoming, and should be ordered to declare in writing whether the Huq-i-Shufaut, or right of pre-emption in the house of Juvehur Baee belonged, by the Moohummudan Law, to Appellant or to Respondent. The Zilla Judge was directed to take such evidence as might be offered in respect to the division of property between the Brothers, Keshoor and Respondent, Rughoonath, the sons of Laldas.

From the plan handed up by the Qazee to the Zilla Court, it appeared that the house in dispute, which was of an oblong shape having its East end towards the street, was entirely bounded on the North, South, and west sides by those of the Appellant, and Respondent. His opinion was to this effect, that since the house in dispute lay exactly between those of Appellant and Respondent, each of them had an equally strong title under the Law to that house, and might each claim half of it. The signature of Respondent's Brother being found among those of the witnesses to Appellant's Deed of Sale, that Brother, Keshoor, retained no right whatever to the house, but Respondent's own right remained good as before. However, if it were true that Respondent had refused to purchase the house when offered to him by Juvehur Baee, his right would not hold after that, under the Moohummudan Law.

Appellant called two witnesses to shew that Respondent had never separated from his brother Keshoor nor divided the family house with him.

The Sitting Judge, observing that no evidence had as yet been taken

taken on the latter point mentioned by the Qazee, "that Respondent would lose his right of pre-emption to half the house, "if it were proved that he had refused an offer of Sale," and finding the parties wished to have it determined, as of importance to their respective rights, a further Precept was issued to take evidence upon it. Of four witnesses called by Appellant, two said the house was offered by Juvehur Baee in Respondent's presence to one Mungul, and that he refused it. The third said it was offered to Respondent, who refused it. The fourth knew nothing about the matter.

Two of the witnesses called by Respondent were in the same predicament, stating that they knew nothing about any offer, and they were not present at the time mentioned by the other witnesses, but one of them said he had heard Respondent say if the house were offered to him he would purchase it. Juvehur Baee was called by Respondent, but not allowed by the Court to be examined. Respondent produced no proof of the Earnest he said he had paid to, and the promise he had received from, Juvehur Baee.

The Sitting Judge being of opinion that Respondent had the offer of purchasing the house, and that by declining to do so, the Appellant's purchase was good, referred the case to a Competent Court.

Competent Court, J. Sutherland, *Second Judge*, E. Ironside, *Third Judge*. Decree 31st May 1823.

The Court reversed the Decrees of the lower Courts, adjudging that Respondent had failed to establish his right of pre-emption, having forfeited the same by declining the purchase of the house in dispute, and the Deed of Sale in possession of Appellant was declared to be a valid instrument

N°. 74.

BHUWANEESHUNKUR KOOSULJEE, ... *Appellant*,

versus

JUGGUNESHWUR and VISHNOORAM, Sons of Ichharam, ... } *Respondents*.

Kaira Udalut, G. L. Elliot, *Register*.

RESPONDENTS on the 23d February 1820, filed a Suit against Appellant in the amount of Rupees 64, to oblige him to remove a Gate which he had built to their great inconvenience and annoyance.

Suit to compel removal of a nuisance, being a Gate built by Appellant at the mouth of a blind alley. Dismissed by the Register from lapse of time, but his Decree reversed by the Judge, on a Vyavustha of the Shastrees "that land "does not "lapse by de-"fault of "claim for 20 "years," and on the ground that Respondents as inhabitants of the alley had thereby a right to claim removal of the Gate. Sudur Udalut held that Respondents, as two members only of the body of inhabitants of the alley, were not singly entitled to Claim removal of a Gate built at the desire and for the benefit of the community.

The parties lived in the Town of Oomreth and in front of their Muhulla, (an alley leading to several houses, generally with only one end open for access to them all) was an area at the entrance, which was on the South, about 12 Guz long from East to West, and five Guz wide from North to South, on which Respondents used to leave their Carts, and this ground was also common to the people of the Muhulla, as the only road to their houses. Appellant had bought a small room from one Koober Bhut, having a door on the North opposite the mouth of the alley, and from the end of this room he had lately thrown a Khirkee or Wicket right across the mouth of the alley, and thereby shut all the neighbours out from free egress or ingress to their houses, and the Carts could no longer come into the Muhulla, whereby all the inhabitants of it were put to much inconvenience. There never had been any Wicket at the mouth of the alley before, and no attempt had been ever made by the former owner of this room to put up a Wicket. As therefore Appellant had taken on himself to do so without right, they prayed that a Decree might be passed for knocking down the Gate, so as to allow of their Carts entering the Muhulla, and an Injunction be issued against such an encroachment on their rights in future.

Appellant

Appellant said that so far from Respondents having a right to complain of the Gate as a nuisance, it had been standing for the last twenty two years in its present state, whilst Respondents had not lived in the Muhulla above seven. It was false that it had been built within the year, and if the inhabitants of the Muhulla considered it a nuisance, and a hindrance, they might complain in a body and he would give them an answer, but Respondents alone had no right to complain against it, which the Sudur Umeen had also thought, for he dismissed a former Suit on the same subject.

Respondents replied that four houses in the Muhulla had long belonged to them, and they were not therefore inhabitants of so short a residence as Appellant said. Their former Suit was dismissed for some error in the mode of filing of it, and it was not true that the Gate was of old standing, but it had been very lately erected. They were absent collecting alms when Appellant built it, but after their return had objected to it, and continued their opposition from year to year. Between two and four years ago, Appellant repaired it in a substantial way with (brick and) mortar, and they knocked it all down again.

Appellant called two witnesses, who proved that he built the Gate about 20 years before, and not lately. They both denied any knowledge of Respondent's constant opposition to its standing.

The Court held it to be proved, that Appellant had not built the Gate anew.

Respondents then said they had witnesses to prove that he had only built it within the last 12 years, but the Court finding from the petition that they charged him with having erected it within the present year, it was not necessary to inquire into it, and therefore passed a nonsuit against Respondents.

Decree 9th June 1820.

Respondents urged nothing further in their pleadings, than they had advanced in the Zilla Court.

Judge's Court in Appeal, J. D. DeVitre, *Judge*.

The

The Court on the representation of Respondents asked the Shastree, whether the Proprietor of a piece of Ground, upon which another person had erected a building, could under the Hindoo law lay claim to recovery of the spot of ground, after more than 20 years had elapsed without his bringing such claim forward, or in any way interrupting the other person in his building? and e contra, whether the Proprietor's having within 20 years from the date of commencing building, disputed possession with the occupant and refused to permit, or endeavored to prevent, the building being proceeded with, would not fully preserve to the Proprietor such right of recovery?

The Shastree thus answered. In this case, even if the Owner of the soil (Bhooswamee) should fail to call upon the Builder within that time to assert his right, although present and observing the trespass and encroachment, still he possesses a right to recover back his land, after that period has expired. But to make up for his neglect of giving such notice, he will lose all the Rent or profits for that time. On the contrary, if the owner of the soil have preferred his claim to stop the building, any time within 20 years from the commencement of the building, whether the dispute have since lasted longer than that period or not, he will retain his claim for all the profits, accruing from the date when the builder first took possession, until settlement of the dispute. This opinion is taken from the Mitakshura in the Vyuvuhar Udhyayu, and from the Vyuvuhar Muyookh under the following passage (the leading words of which "Pusyuto ubroovuto" only were quoted by the Shastree) "A person be-
"holding during twenty years without remonstrance, his own
"land enjoyed by another, shall lose the profits of it for that
"time; and with respect to personal property, if unclaimed for
"the space of ten years, the owner shall lose its profit for that
"time." (1) Three

(1) Mit. Book second, leaf 11th, page 2d, line 14th, and Muyookh, in the Bhooktee Prukurn or Chapter on Possession. The commentary on the passage is long and affirms the right of recovery of both kinds of property (after loss of its profits) if not held in possession by others for 100 years, or three generations.

Three witnesses were examined on the part of Respondents, and proved that there was no Gate to the Muhulla until 19 or 20 years ago, when Appellant built it. The Muhulla contained 14 or 15 families, the only access to whose houses was by the road on which the Gate now stood. The ground was formerly used by them for a Cart stand, and it did not lay in the power of Appellant to sell it. They allowed that the only inconvenience experienced from the Gate being there, was, that their Carts could not now be brought into the open ground to unload. That Respondent's father Vishnooram was not living in the Muhulla when the Gate was built, but afterwards succeeded his Uncle as Proprietor of one of the houses, and that their family now possessed five houses, out of 15 in the Muhulla. One of these witnesses admitted that the inhabitants could not get into their houses at night from the main street, or Road (Raj Marg) until Appellant opened the door, as he had charge of it, and that an old woman living near the Gate, had made a dispute when it was building.

The Court held that the ground in dispute belonged jointly to the whole of the society composing the Muhulla, so that no one single member of it could either sell or mortgage it. Respondents were so far endamaged by the Gate, that if it were not there, Carts might come up to their doors with wood, grass, and other supplies, whereas now they were obliged to stop in the street. The old woman had objected to the Gate when it was building, and the former owner of the Respondent's five houses had likewise disputed about it 6 or 7 years ago. On this account, and under the exposition of the Law, the Register's Decree was reversed in favor of Respondents, an order being passed for destroying the Gate, and leaving the Ground in the same state as before the erection of it.

Decree 12th Feb. 1822.

Sudur Udalut, *Sitting Judge.* J. Romer, *Chief Judge.*

Appellant, in addition to his defence in the Zilla Court, pleaded that the Gate was built in A. S. 1855 or A. D. 1799, with the consent of all the persons at the time inhabiting the Muhulla,

Muhulla, and was intended to serve as a defence against thieves, and that its general advantages must be considered before the inconvenience experienced by one or two individuals, new comers, from an old established Rule.

The Sitting Judge did not think the dispute was to be held as contemporaneous with the putting up of the door, but held it also to be inferred from the evidence of the witnesses, and from the circumstance of no other householder having joined Respondents in this action, that the benefit of this Khirkee, or Wicket, much exceeded its inconvenience, and it were in this view absurd to suppose that the desires of two individuals should be preferred to the general advantages of a numerous community. As a matter of right, their claim was without any foundation at all.

The case was therefore referred to a competent Court, with a recommendation for reversal of the Zilla Judge's Decree.

The Court agreeing with the Chief Judge in his view of the case, reversed the decision of the Zilla Judge, and affirmed that of the Register, in favor of Appellant, with all his Costs.

Competent Court. J. Sutherland, *Second Judge.* T. Barnard, *Fourth Judge.* Decree 12th Sept. 1822.

N°. 75.

DEEN SHAH and MUNCH,HUR SHAH, Sons of EDULJEE, MOKHTARS, on the part of JUMSHEDJEE and HORMUZJEE, Sons of BAHMUNJEE, Shuhursaee or Rusmee Parsees..... } APPELLANTS,

VERSUS

PESHTUNJEE KALA BHAEE, Chooreegur or Kudeemee, Parsee..... } RESPONDENT.

ON the 19th August 1819, Appellants filed a suit against Respondent, in the amount of Rupees 25,000, as Damages to be

Surat Udalut, G. W. Anderson, *Judge.*

Parsee Fire Temple case. Suit by Parsees of the Rusmee Sect to prevent the building of an Atush Buhram by one of the Shuhursaee sect. Decided by the Zilla Judge that each party was at liberty to build one, for any thing in this case shewn to the contrary. Settled in the Sudur Udalut, by arbitration, that the Rusmees should first build their Temple and the Shuhursees theirs at any time subsequent.

be recovered from Respondent for commencing to build a Principal Fire Temple, called "Atush Buhram" in Surat, Appellants having previously declared their intention of doing so, and two not being by their Laws permitted to exist in the same place.

They in their Plaint said, that about seven years ago they formed the intention of erecting an Atush Buhram at Surat, in the name of Dada Bhaee Nowshirwanjee Modee, and made it known to Khoorshedjee Modee, and the Head Parsees of Surat, who gave their permission for its erection. Not finding a spot proper and fit for the Atush Buhram, the execution of this intention had been put off until about three months ago, when Respondent commenced an undertaking of the same nature, and had actually carried it on in opposition to the injunction of the Head men of their Cast. His pretence was, that he had made a vow five years before, but Appellants would prove that he had made them an offer of a spot of ground only four years ago, as a proper place for them to erect their Atush Buhram upon. As the consent of the Cast or Body of the Parsees, was necessary to the performance of any great work so intimately connected with their Religion as the present, it was clear that they, having first obtained this consent, were entitled to go on with it in preference to Respondent. They claimed therefore an injunction to him to stop all further building, and permission to themselves to go on with the erection of their own.

Respondent answered, that when dangerously ill formerly, he made a vow to erect an Atush Buhram if he recovered, and it was in pursuance of his vow, not from any spirit of opposition to Appellants, that he had commenced. He had procured the Fires in the manner enjoined by their Religion, and which by their tenets could not now be disposed of, or considered as any thing but an Atush Buhram, nor worshipped in any other way. There were two Schisms among the Parsees, that of Rusmee,

to

to which Appellants belonged, and that of Kudeemee, with which Respondent sided. This was originally caused by the former calculating their time improperly, *losing one month*, and they had since split on other points connected with their religion. The greatest number of the Parsees were, he admitted, of the Rusmee Sect, but this did not signify, since the Bombay Atush Buhram was built by Dada Seth of the Kudeemee Sect, though the numbers of the other Sect preponderated there also. Appellants had said that they were to build their Atush Buhram in the name of Dada Bhaee Modee, but that person left an adopted son named Khoorshedjee (son of Hormuzjee Modee,) who was in Surat, whilst his Widow Jaee Baee, and nephew Framjee, were still alive, and Appellants could not step before the Heirs in such an undertaking.

Appellants replied that there was originally no Schism in their Body until about 75 or 80 years ago, a few members set up a new mode of computing their time, by commencing their new year *a month earlier* than it properly should arrive. With respect to Respondent's objection to their not being the Heirs of Dada Bhaee Modee, they informed the Court that his Widow, Nuwaz Baee, was their own Sister, and the lawful Heir of her husband, and the Atush Buhram was in fact her undertaking. They had recourse to the Court for redress because two Atush Buhrams, or Principal Fire Temples, could not by their Tenets exist in one and the same City, or place, and it was on this account that they sought to prevent Respondent from destroying their undertaking, as he undoubtedly would, by building his before their's, which would then be utterly useless to them or their sect. As a further argument for the preference being given to their undertaking, they said the place which Respondent had prepared was unfit for it, and the materials of the different fires were collected in an objectionable manner, wherefrom his Atush Buhram would be defective in sanctity.

Respondent rejoined by saying that even by Appellant's argument

gument " that two Atush Buhrams could not exist in the same place" he himself having commenced, and nearly completed his, they must desist from their intention, on his intention or vow being much more clearly proved, by his having actually put it in execution, than their's, which was only known by their own declaration lately made. But he denied that any impediment existed to the erection of two Atush Buhrams in one City, and as to consent of the Body, it was not considered necessary to sanction any undertaking of the kind.

The Court recorded a motion from the Unjoomun, or assembly of the Parsees, representing the inconvenience they suffered from the stoppage put to the Respondent's Building, and praying that a decision might be passed on the case. They represented that the Schism extended, not only to dates but to their General Feasts (Gumbhar) and Public meetings; to their Firekeepers and Ugyaree or second rate Temples, their Dustoor or High Priest, and Mobids, or Priests, and that the other sect had no business to interfere with or prevent the building of a Fire Temple by them. This being the month of Ardebihisht, in which the worship of the Atush Buhram is particularly enjoined, they prayed for a decision before its termination, for if not then passed they averred the consecration of their Atush Buhram must be put off for two years.

Appellant's first exhibit was a Mehuzur, signed by Modee Khoorshedjee Dosabhaee; Dustoor Darabjee Roostumjee, and near sixteen hundred Parsees of Surat, to this effect " that Ap-
" pellants Jumshedjee and Hormuzjee, Sons of Bahmunjee of
" Bombay, had made a vow to build an Atush Buhram in
" honor of Dada Bhaee Nowshirwanjee Modee, which they
" had communicated to the Unjoomun of Surat by letter, both
" at the time and since. That Respondent had, without con-
" sent of the Unjoomun, commenced building an Atush Buh-
" ram, of his own pleasure, on account of the Chooreegur or
" Kudeemee Sect, but since this would only benefit a small
" number, while that to be erected by Appellants would an-

" swer

" swer for the whole of the Shuhursaee, or Rusmee population,
" and would be in honor of their God and his Prophet Zura-
" toosht, they prayed that the Court would take it into consider-
" ation and permit their Atush Buhram to proceed, and would
" order that of Respondent to be stopped, because two Atush
" Buhrams were never built in one and the same city."

Another from Nowsaree, signed by " the Dustoor, or High
" Priest, with all the Mobids, or Clergy, and the Behdeen, or
" Laity, of that place, 250 persons, declaring that the Atush
" Buhram at Nowsaree was built after obtaining consent of the
" Unjoomun; that an Atush Buhram could not be built without
" such consent, and two Atush-Buhrams by the Customs of
" their forefathers were not permitted in the same city; and
" affirming their knowledge that both Dada Bhaee, and his
" Mother Nuwaz Baee before him, had expressed their inten-
" tion to erect an Atush Buhram."

Another to the same effect, signed by Usfundiyarjee Dustoor, with all the clergy and Laity of Broach, in all four hundred persons.

A similar one from Oodewara, signed by Darabjee Buhram-jee Dustoor, and 37 persons.

Among a number of letters, chiefly from Hormuzjee Modee to Nuwáz Baee respecting the impediments to commencing the Atush Buhram, was one to her from Respondent offering her two houses for the purpose in Sumvut 1869, and another of Sumvut 1875 from him to Appellant Hormuzjee Waria, complaining of his having interfered with the erection of Respondent's Atush Buhram after having once before said he had no intention of building one himself. Appellants appeared from these letters to have had some difficulty in procuring persons at Surat fit for performing the ceremonies required to make an Atush Buhram, as they applied to Nowsaree for priests learned enough to superintend the undertaking.

Respondent

Respondent exhibited a Deed of the time of Ahmud Shah in the year 1162 Hijree drawn up with the view of reconciling the difference of one month in the computation of time among the Parsees. Moohummud Ulee Moonujjub, the Royal Astronomer, was the person applied to, and he thus stated the result of the various calculations. "Some of the Parsees "attributed it to the Kubeesu or Rusmee Leap year, and it "became therefore necessary to ascertain the true date of the "Nowroz-i-Jumshedee, or Rusmee new year's Eve, and he "thereupon fixed the 1st Furvurdee, their next new year's day "or 671st Mulik Shâhee, to correspond with the 2d Rubee oos "Saneo 1162, Hijree, the current year, or 2d of Mihur, 1118 "of the Yuzdeezurdee or Kudeemee Æra, said the Mobids, or "priests of the Kudeemees did neither admit of change nor of "the intercalation of the Leap year in their reckoning, and "that their new year's day, 1st of Furvurdee of the coming "year, would fall on Sunday 8th Shuwal 1162, commencing "their 1119th year of Yuzdeezurdee. From old calculations "and books it appeared that there were two months called "Aban" in the reign of Nowshirwan, and that the Khumsu, "or accumulated intercalations of the Leap year, was in that "year added as the last of the two Aban. This intercalation "must have caused the difference, for a day every fourth year "would make a month's variation in 120 years. Now since "their Feasts would go all wrong if this Leap year were not "observed, they had been particular in taking in each day, as "it fell, but had omitted to include in their calculation the "whole month when completed by the lapse of 120 years, or of "twelve months in 1440, when new year's day would fall twice, "had they done which, it would have brought up their time "one month, to the very date of the Kudeemee Æra."

A Copy of another Deed, drawn up at Yuzd in Persia, upon a reference made there by the Parsees of India, in order to determine the Schism respecting the computation of time, which the authorities of Yuzd pronounced to be erroneously calculated

by

by the Rusmees. The date of this deed was Thursday 15th Jumad oos Sanee 1182 of the Hijree, Furrokh Mahee Aizd, or 12th Ardebihisht Kudeemee 1138 of Yuzdizurd, or 15th of the first Tishreen, 2080 of the Sikunduriya Æra, and 12th Aban, of the Julalee.

A Copy of a Paper of Questions transmitted by the Parsees of Surat to Isfuhan for the purpose of reconciling, if possible, the two sects of the Parsees by a reference to the heads of their religion in that country, to settle upon fixed principles the conflicting dates, by referring, to a particular date of the Hijree, (Monday 20th Jumad oos Sanee 1188,) the corresponding day, month and year, of the Kudeemees, and to state fully the nature of the "Kubeesu," or "Leap year," of the opposite Schism of Rusmees.

The answers of many different persons annexed to this paper, agreed in fixing Monday 20th (from the new moon's appearance, or 22d by calculation) of Jumad oos Sanee 1188 of the Hijree, to correspond with the 19th of Isfundiyar, 1143 of the Kudeemee year of Yuzdizurdee, or with 18th Aban 2085 of the Roomee or Sikunduriya year. Moohummud Hoossuen, Astronomer of Isfuhan, gave therein the following account of the dispute, "A year of 365 days and one quarter was introduced "by King Jumshed, who did not reckon in the quarter days "till after a lapse of 120 years, when a whole month was to be "added to the 121st year, which thereby contained thirteen "months. This month was called, "Kubeesu" or "Intercalary." This mode of computing time was however not acted "upon more than 960 years out of the first 1440 years or twelve "of Jumshed Cycles, when the second Aban was intercalated, "and at which very time was established the new Æra of "Yuzdizurd, of which eleven hundred and forty three years had "since nearly expired. These two periods made together 2003 "years, out of which one set of twelve Cycles of Jumshed (or "1440 years) was finished, and 663 years more of another.

"Now

" Now six hundred out of these 663 years were equal to five " Kubeesu Cycles of 120 years, leaving nearly 63 years com- " pleted of a sixth. If the calculation were made from the de- " luge, which happened *by universal admission* on a Friday, it " would give, up to the above quoted date 19th Isfundiyar 1143, " a period of 3735 years and 322 days (since the Flood) " And the real Parsees' (or Kudeemee) year consisted of exactly " 365 days, and no more, which by calculation would bring " the date to be the 19th Isfundiyar, above stated, and this was " acknowledged and followed everywhere as the true date."

These documents being recorded, Respondent called Ilmoorjee Nowrojee Sujjana (Adhyaroo of the Nowsaree Sect) who said he had acted on the part of the Nowsaree Sect's Dustoor at the preparation of Respondent's Atush Buhram, ten or twelve times. The Kudeemees and Shuhursaees differed a month in their time, but in no point of religion. He admitted that for 80 years and upwards the Dustoor, Firekeepers, Inferior Fire temples, and Priests, of the two Sects were distinct and separate. Had seen in 1875 a letter from Roostumjee Dessaee of Nowsaree to Respondent respecting his intention of erecting a Fire Temple. Knew also that Suhoorabjee, the Brother of Dada Bhaee, had expressed an intention of building an Atush Buhram, in presence of the assembly, and that Nuwaz Baee, his Mother, afterwards wrote to the sons of Suhoorabjee asking whether they intended to fulfil their father's wish. Three things required consent of the assembly, an inferior Fire Temple, a Tomb, and an Atush Buhram, none of which works could be built without consent. Only one Atush Buhram could exist in the same city. The name of Atush Buhram, the King of Fires, was not given until the fire had been collected from one thousand and one sources, and they had been united, and worshipped upon a stand, or throne, by the Unjoomun for a whole year. Both of the Sects worshipped together at the Kudeemee, or Chooreegur, Atush Buhram in Bombay, and at those of the Shuhursaees, or Rusmees, at Oodewara and Nowsaree.

saree. There was no written prohibition against two Atush Buhrams being in the same city, but two had never yet happened to be in the same place. Out of 21 Books of Religion among the Parsees when they left Persia, he said they had only preserved one called the Vundeedad.

Suhoorabjee Andharoo said there were three sects among the Parsees, the Rusmees, the Kudeemees, and the sect of Nowsaree, in each of which the customs (Rusm) Temples, and attendants, were distinct. The Atush Buhram of the Kudeemees, or its ashes, would not be used by the Rusmees, nor their's by the other sect. Their hours (1) and Feasts and Holy days, were all different. The Ashes of the Nowsaree Atush Buhram would not be used by the Kudeemees, but only by the Rusmees. Witness and his Father were formerly in the Rusmee sect, but seceded and changed to that of the Kudeemee about 20 years ago. Nothing was written in their books against two Atush Buhrams being erected in the same city. All that was said about it was, that one must be built in a City where Parsees reside. With respect to the disposal of the bodies of persons of the Sects after death, he said there were two Tombs in Bombay, one a private one, built by Dadee Seth, in which the bodies of other persons not of his family were sometimes permitted to be exposed, but those of Rusmees were never exposed there; in the other, belonging to the Rusmees, the bodies of Kudeemees as well as Rusmees were exposed. The Tomb at Surat was built by the whole Unjoomun and was common to both Sects. He had heard that Kaoosjee Framjee once declared an intention of erecting an Atush Buhram, but he had never executed the intention. The Priest of the Kudeemees would officiate at the wedding of a boy of the Kudeemee Sect with a Girl of the Rusmee, and vice versâ. Respondent's Father and Grandfather were formerly of the Rusmees' persuasion, but then used the prayers after the manner of the Kudeemees.

(1) Parsees divide the day into watches. From 6 A. M. to Noon, Ahwun. From Noon till 3; Rupitun. From 3 P. M. till 6 P. M. Wujirun. From 6 P. M. to Midnight, Awuksutrun. From midnight to 6 A. M. Hewsun.

The Court forwarded five papers of Questions to the Senior Magistrate

Magistrate of Police in Bombay, to be put to Khoda Bukhsh, and Nanidar, and Buhram Parsees; to the whole Unjoomun of the Kudeemees; to Moolla Feeroz son of Kaoos Dustoor; to the whole Unjoomun of the Rusmees with the exception of Appellants; and to Framjee Kaoosjee.

It was proved from their Answers, that there were two Sects, Kudeemees and Rusmees, among the Parsees, which Sects were quite distinct in all their ordinances and the ministers of their religion. That Dada Bhaee Suhoorabjee Modee was of the Kudeemee persuasion, and that his Widow, Jaee Baee, belonged to that Sect and performed her religious duties at its Atush Buhram, whilst they declared that the Places of Worship, Fires &c. of the one sect would not be made use of by the other, the Rusmee Unjoomun further asserting that the Religion of the two Sects was really the same, though the Ministers and the practise of it were different. Framjee Kaoosjee said that Dada Bhaee Modee died in A. D. 1810, and Appellants, his Brothers in law, performed his funeral ceremonies at Surat, and then wished to erect the Atush Buhram, but could get no place fit for it till lately, though they had often tried.

The Court next recorded a correspondence with Government, which was anxious that this case should be amicably adjusted, but finding it impracticable, authorized the Zilla Judge to put a stop to the building of an Atush Buhram by either party until a decision had been passed on the dispute by the Court.

Three letters were handed up by Respondent. One of them was from Khorshedjee Dosa Bhaee Modee to Framjee Kaoosjee respecting the latter's intention of building an Atush Buhram which the Modee expressed his sorrow had not been yet built, and informed Framjee Kaoosjee that he had given Respondent leave to commence an Atush Buhram. This letter was dated 14th Vyshak Sood 1875.

Palunjee Kaoosjee was called on the part of the Respondent

to

to prove that Respondent had commenced building an Atush Buhram before Appellants made their proposal to the Unjoomun of the Rusmees. He declared that he had signed a Mehuzur of the whole Unjoomun, granting Respondent permission to build an Atush Buhram; that when any number of persons from 5 to 20 had met at Khoorshedjee Modee's house as an assembly for any purpose, the business for which they had met might proceed without the attendance of witness, who had acted under the Modee for the last two years to sign for him, and do any other official acts; denied that there was any other Modee among the two sects besides Khoorshedjee Modee. This witness agreed with Suhoorabjee in saying that the ceremony of marriage was always performed by an Andharoo of the sect of which the Bridegroom's family happened to be.

Roostumjee Nuthoo; Manikjee Mihirwanjee; and Peshtunjee Bhikajee, agreed with this witness in declaring that Respondent had commenced his Atush Buhram before Appellants made any mention of their's. They were of the Shuhursaee or Rusmee persuasion, and admitted that they would consider the building of an Atush Buhram by Respondent, a Kudeemee, to be a meritorious act, and the building available to themselves.

Respondent moved the Court for permission to take advantage of a tree at a Garden of the Nuwab having been set on fire by lightning to add it to the Fires of his Atush Buhram (then at a stand by order of the Court) as the lightning was one of the thousand and one sources from which to compose an Atush Buhram. Leave was granted accordingly.

Respondent produced an extract from the 374th page of the Zendavesta to prove "that a person who interrupts any work "of Religion," as he alleged Appellants were doing, "was "not to be permitted to sit down to meals with the rest, and was "to be stuck all over with iron pins, as a punishment."

An extract from the 277th page of the Riwayut nama was

also

also exhibited to prove " that the permission of the Dustoor in "any matter of Religion was alone sufficient, and that it gave "tenfold force to the act, whilst on the contrary the want of "such consent rendered the act null and void."

Appellants called Khoorshedjee Dosa Bhaee Modee, the Head of the Parsee Cast, who deposed that Appellants had applied to him eight years ago, and through him to the Unjoomun, for leave to erect an Atush Buhram, and that such leave had been given; that he had never seen nor heard of two Atush Buhrams being erected in the same city, but on the contrary it had been handed down from their ancestors, " that two could not be," though he could not say any written prohibition existed; that a Mehuzur or formal Deed of permission was executed by the whole Unjoomun about two years before, for Appellants to erect an Atush Buhram in Surat; that the two sects intermarried and had a joint Tomb, but had different Priests and performed their ceremonies separately, though in essentials they were exactly alike. Witness was of the Rusmee persuasion. Had not heard whether the Nowsaree sect permitted the body of a Shuhursaee to be put in their tomb, but they did permit it to strangers. The Shuhursaee sect rubbed the body and then washed it, but he believed the Nowsaree sect did not wash it. When 15 or more of the principal Parsees were collected on any business, it would be considered to be an Unjoomun, equally as much so as a full meeting of the people. Believed that the consent of the Unjoomun was essentially requisite only for the erection of an Atush Buhram, or a tomb. The erection of any Atush Buhram must be a subject of joy, but it would be much more satisfactory that it should be built by a Shuhursaee (or Rusmee) because that sect was much more numerous than the Chooreegurs (or Kudeemees) and the temple would consequently be available to many more people.

Dada Bhaee Roostumjee, Dustoor or High Priest of the Parsees, corroborated this evidence of the Modee. He said that

that a prohibition against the erection of two Atush Buhrams in one city was written in the Vurzgurdeenee, a work which a nephew of his had in his possession. Witness stated himself to be a Shuhursaee. At funerals in his family the feet of the body were laid straight, in those of the Modee's family, the legs were bent. In doing so they only followed each the custom of their ancestors. The Surat Tomb was built jointly between the two sects, and consecrated by witness's father.

Khoorshedjee Kala Bhace, another witness, agreed with them on the difference between the two sects on all the points of religion they had mentioned, as did Hormuzjee Roostumjee and Homjee Manukjee. These persons declared positively that Appellants had never to their knowledge consulted the Unjoomun, and obtained its consent for the erection of their Atush Buhram, until after Respondent had commenced his.

Suhoorabjee Roostumjee, Dustoor of the Chooreegurs, deposed that Respondent asked his permission to erect his Atush Buhram. He admitted that the two sects differed a month in their time and had separate Fires, and distinct ministers, and Temples for them, and that the ministers of the Rusmee Atush Buhram at Nowsaree were not applied to by the Kudeemees, who would not take Ashes &c. from it for use in their own ceremonies. The Tomb in Bombay was common to both sects. The Atush Buhram at Oodewara was supplied with sacred fire brought by the Parsees from Persia, and that of Bombay was supplied from that of Oodewara, which belonged to the Rusmee sect. Munchurjee Son of Hormuzjee was now Modee of the Chooreegur or Kudeemee sect, and Khoorshedjee of the other. He had never heard of any Priest of the Chooreegurs having officiated at an Igyaree, or common Temple of the Rusmees. The Tomb at Surat was built jointly by both sects and used by both.

Both the parties in this case endeavored to shake the validity of each other's acts with respect to the erection of the

Atush

Atush Buhram, whether by pointing out irregularities in the collection of the Fires, or flaws in the title deeds of the spots of grounds purchased for the scites of the Temples; and by bringing witnesses to *deny* that any consent had been given by the Unjoomun for the erection of the opposite party's Atush Buhram &c. &c.

Respondent exhibited an Extract from the Zendavesta, as follows. "It is said in speaking of Religion, that it is "necessary in every place where any Behdeens" (Parsee Laity in particular, or the sect in general as wearing a string round their waist) "may have settled, there should be" (bashud) "an Atush Vurhuram in every such city or place."

A verse from the Sikundur namu was pointed out by Respondent which run thus, "he put out many Fires of the Heerboods "or Disciples of the Priests, and destroyed a vast number of "them."

An Extract from the Zuratoosht namu to the following effect; "It was commanded that Priests, pure in heart, and Heerboods "also should be brought. After some discussion respecting the "Atush, or Fire, in presence of the Prince and his Nobles, it "was represented, that the Atush should be set up in every "place with every thing necessary, with due veneration; that a "Dome should be built in every place, and a Heerbood ap- "pointed to each, and that the Atush should be placed within "the dome, upon a throne."

The Court represented to Respondent that these Extracts did not prove that more than one Atush Buhram could be erected in one place, and he was asked to specify in what City it had ever happened. He admitted that two Atush Buhrams had never existed in any one place in India, but he could not say whether they had in Persia, their own country, or not, and begged to refer the Court to a passage in the Shah nama, which proved nearly word for word the same as that of the Zuratoosht nama.

An

An Extract from the Boorhan Katue, a Dictionary, gave the following explanation of the words.

Azurabadgan,—" A name of the City of Tubrez, called " for the same reason the Atush Kudu-i-Tubrez, because there " were in that town many Atush Kudu or Fire Houses, which " obtained it the name of Azurabad.

Azur Aeen—" Is the name of the fourth Fire house of which " they say the Persians had seven very famous ones, to corres- " pond with the seven planets, the first named Azur-i-Mihr; " 2nd Azur-i-Nuosh; 3rd Azur-i-Buhram; 4th Azur Aeen, (this " one); 5th Azur-i-Khurbun; 6th Azur-i Burzeen; and 7th Azur " Arduhisht; each supposed to be under the protection of a par- " ticular Planet, so that the things devoted to the service of that " Planet are equally made use of in the temple under its aus- " pices."

Marush—" The name of one of the old Idols, whose temple " was built on a Hill about three Fursungs from Isfuhan, and " besides which there were six others, each dedicated to one " of the Planets, which Temples Gooshtusp put down and " built the Atush Kudus on their scites, and these Temples of " Fire went also under the general name of Nuobahar, as " Nuo Buhar-i-Mah; Nuo Buhar-i-Nahid."

An Extract from the 2nd volume, and 40th Chapter of " A " History of the Armenians from the beginning of the world up " to the year 1784, written by Padre Michael Chamcheriz " Mekitarist of Constantinople, in three volumes, printed at Ve- " nice in the year 1785, by permission of the superiors." But Mugiage Kunoony, " who was the Marsban or Governor of " Upper Armenia, having exercised his authority 30 years in " the city of Turcen, departed this life. Then Khosrow the King " of Persia appointed in his place another Governor named " Tenshabooh, who, according to Stephens Asoghij, of " Doron, who wrote a History of the Armenians up to the " year

" year 1000, being a shameless and cruel man, given up to " licentiousness, kindled the Fire of Ormuzd in the Province of " Rushdoonick and used to force the Christians to worship the " same; in consequence, many Christians were put to death.

" This same man Tenshabooh wishing to promote the wor- " ship of Fire and not being contented with one Fire House " which the Persians had in the Town of Tureen, erected many " other Ashes' Houses (which the Translator said meant the " same as Chapel opposed to Church,) besides building another " large and magnificent Fire House near the Palace of a Per- " sian Prince called Hamugur and calling from Persia many " of the Moogas or Magi, by their means forced the Armenians " to change their religion, and increased crimes in the Town."

The case being now closed, the Court proceeded to pass judgment, and thus recorded its view of it. Appellants sued to have the building of the Atush Buhram by Respondent put a stop to, on the plea that Respondent was not entitled by their Law to do it, since two Atush Buhrams could not be in one and the same place, and that the vow on their part was made 7 years, ago. The Court had first to find, whether Appellants did make such vow. Upon the evidence to this point no confidence or reliance could be placed, as it appeared made up for the occasion. It was probable that they had formed such intention, but it was not manifested by any act. By the letter of Khoorshedjee, Modee, who was evidently a friend of theirs, to Framjee Kaoosjee, it was to be inferred that they had given up the idea, upon their own principle that only one Atush Buhram could be in one place, when they found that Respondent was building his, since the Modee had made no mention of their intention in his letter; or else, that the Modee himself thought their intention was given up, now that another was commenced. It was not proved that they had signified their wish to the Unjoomun, before Respondent commenced his building, nor that any right was derivable to Appellants from such intention or vow, superior

to

to that made by Respondent; both must be considered equally good originally. On the Appellant's side, a widow wished to build an Atush Buhram in honor of her husband. On that of Respondent, sickness was the motive assigned for his vow, so that one right appeared just as good as the other, without any reason having been assigned for stopping the performance of Respondent's vow. Appellants had not shewn that by the Rules of their Religion, in consequence of a vow made by one person, it was forbidden to another person to fulfil a vow of the same nature though it was originally equally optional with both of them to make it. With respect to the building of two Atush Buhrams in the same city, neither Appellants nor Respondent had shewn any positive prohibition or permission to exist on the subject. It lay with Appellants however to prove that more than one could not exist in one and the same city, whilst from the Books referred to by Respondent, it could not be said with certainty that more than one might be erected in the same, and the matter was therefore doubtful. However, Appellants had failed to prove that two could not exist in one city, and it was extraordinary that if a prohibition did exist it was not expressly laid down in their Religious Books. There were now two sects among the Parsees, and as one Atush Buhram formerly served for all sects, so now, there would be one for each, and any one was at liberty to build one provided no impediment existed in the Laws of their Religion; wherefore, as Appellants had shewn no such impediment to exist, and the wish of one sect appeared to be in Respondent's favor, whilst from the schism in the Cast, the general consent of the whole could not be expected, the Court decreed that the Appellant's claim was improper, and dismissed it with Costs.

Decree 27th Feb. 1822.

The following minute was recorded by the Sitting Judge as his view of the case.

Sudur Udalut, *Sitting Judge.* J. Sutherland, *Second Judge.*

This suit is between persons of the two different classes into which the followers of Zuratoosht or Zoroaster, the Parsees,

or

or descendants of the ancient Magi of Persia, are now divided. They emigrated from their own country to India upwards of 1000 years ago, when it was overrun by the followers of Moohummud, having had before them the alternative of dying by the sword or of submitting to the religion of the conquerors; and it appeared that their ancient Books were destroyed by the conquerors, so that every thing concerning their Law now rests on tradition and compilations of their learned men since their arrival in India.

On the landing of the Parsees in this country, they entered into a compact with the Hindoo Ruler at the Town of Sunjun, a few miles up the river that runs past Oomurgaon in the Northern Konkun, where they settled and their first great Fire Temple was established; they scattered abroad in the course of time, and established themselves in various places in Goozerat &c. It cannot be said that they retained their own laws, because by the compact they entered into, they bound themselves to an observance of many of the customs of Hindoos, and although they have preserved their religion, the customs of the country and will of the ruling authority have predominated. Three Fire Temples of the first magnitude, are all that ever appear to have been erected in India; one at Sunjun, as already stated, which was afterwards removed to Oodewara eighteen miles North and on the Sea Coast; a second at Nuosaree, and a third on the Island of Bombay. The two first are common to the two divisions, while that at Bombay belongs to the Kudeemee, or lesser sect.

A schism took place among the tribe, about 50 or 60 years ago, from a difference in the computation of time, and in modern days has produced a division under the denomination of "Rusmee" and "Kudeemee," the first implying adherence to the current system used in India by the Parsees, while the latter follow the ancient system of reckoning, and are the least in point of numbers in Surat, being only a twentieth part of the Rusmee population.

This

This schism, though founded on such slight grounds, has led to an actual division between the Sects in some Ecclesiastical points, and it is principally objected, that a Rusmee cannot for all religious acts use an Atush Buhram dedicated to holy purposes by a Kudeemee; consequently, what might be in every respect fully serviceable to a small community, could not be so to the Majority, and on the other hand, an Atush Buhram dedicated by a Rusmee, can be made use of for all purposes by a Kudeemee, and is consequently common to all.

Another great objection appears to arise among the Rusmees to Respondent's building, from the supposed guilt of consecrating two Atush Buhrams, or Chief Fire Temples, in the same place, and this idea, whether well or ill-founded, is so strong, as to prevent the construction of another, should the Kudeemees succeed in establishing their's first, notwithstanding the disadvantages which the great mass of the Parsee Population would labor under, from the Temple being of Kudeemee consecration.

With all this before him, the Sitting Judge considered it would be manifestly for the public good, and fully answering the ends of justice, if the case could be settled, so as to accommodate differences between the parties, and thus put an end to the bad feeling that now existed between them, which no decision founded on strictly legal principles was ever likely to effect. He therefore embraced an opportunity presented by the Appellants in their Petition of Appeal to propose to the parties an amicable adjustment on the following basis

" That as Appellants were desirous of erecting an Atush Buhram they should first consecrate their's within a limited time," and

" That thereafter the Respondent might proceed with the " consecration of his."

At length, the following articles of agreement, signed by the

the parties, and witnessed, were put in and at the request of the parties, passed into this Decree.

" It is represented to the Sudur Udalut by Appellants (named) that they brought an action against Peshtunjee Kala Bhaee Respondent on account of an Atush Buhram, damages laid at 25,000 Rupees, and under the directions of the Sitting Judge of the Court of Sudur Udalut, the Appellants and Respondent have adjusted matters between themselves, in manner following. That Appellants shall make an Atush Buhram, as well as Respondent; that Appellants shall first consecrate their Temple, and thereafter Respondent Peshtunjee Kala Bhaee. The time limited for Appellants to consecrate the Atush Buhram, is Suros, the 17th day of the 2d month Ardebihisht, of Shuhursaee, 1193 of Yuzdizurdee, corresponding with the 19th day of November 1823 of the Christian Æra, after which Respondent may consecrate his when he thinks proper. If Appellants consecrate their Temple within the period herein specified, it is well, and on failure, Appellants give up all claim on Respondent. Both Appellants and Respondent are at liberty to proceed in every other manner, with their Temples. This arrangement has been fixed between the Appellants and Respondent. Respondent having been engaged in erecting an Atush Buhram, was prevented in the progress thereof by Appellants; whatever expense and loss may have accrued to Respondent, he abandons all claim on Appellants on account thereof.

" The whole of the Costs in the Sudur Udalut, are to be borne by Appellants.

" Dated Wednesday 3d Bhadurwa wud Sumvut 1878, 4th September 1822.

" Witnesses,
Undhearoo Eduljee,
Kaoosjee,

Signed (on behalf of Wariya Jumshedjee and Hormuzjee Sons of Buhmunjee.)

Isfundiar

Isfundiar Hukeem, Jumshedjee.

Deenshah and Munchershah Sons of Eduljee.

(Signed) Peshtunjee Kala Bhaee,

(Signed) James Sutherland, Second Judge."

Note.—Respondent afterwards attempted to take advantage of the advance of time by the reckoning of his Sect, to consecrate his Atush Buhram before Appellants could consecrate their's—By the assistance of the Sitting Judge however, the matter was again arranged, and the Rusmee Temple eventually consecrated by Appellants, previous to the consecration of the Kudeemee Temple by Respondent.

N°. 76.

GOOLABCHUND UMBARAM.....APPELLANT,

VERSUS

POORSHOTUM HURJEEVUN and .... JUOHUR BAEE, his Mother..... } *RESPONDENTS.*

Ahmedabad. Udalut, D. Greenhill, *Register.*

ON the 30th April 1821, Appellant laid his Suit against Respondents, to recover from them the sum of Rupees 300 due to Appellant on a House mortgaged to him, but which Respondents were about to sell.

He said that his Father's Uncle Prublioodas Kaoosjee, had a claim against Bhuwanee Ruttunjee, owner of this House, under a San Gireneea Bond of Rupees 201, dated 2d Jesht Sood Sumvut 1852 or A. D. 1806, making over the lower part of this House in mortgage. The Uncle died in A. S. 1868 or A. D. 1812, and Appellant became his Heir. The lower part of the house was put into his possession agreeably to the Bond, and he had lived in it from that time until the present. But Respondents

Respondents, Mortgagees of the upper story of a house, and obtaining attachment against the whole house under a Decree against the mortgager, held liable on the subsequent

sale and demolition of the house, make good the amount of a Mortgage *held by Appellant of the ground floor.*

Respondents obtained an order for the attachment of it in satisfaction of a Decree in their favor against Rughoonath, Son of Bhuwanee Ruttunjee, and were about to have it sold, to prevent which the present action was filed.

Respondents rested their defence, First, on the limitation of 12 years, as barring Appellant's right to recover, they denying that he had held possession within that time; secondly, on the Suit being inadmissible, having been filed after operation of the term allowed in the notice of Sale; thirdly, on there being other Heirs of his Father's Uncle, besides Appellant, alive.

Appellant denied these assertions to be true or applicable to his case.

The Bond, which he exhibited, purported to be passed for a Loan of Rupees 200 at 12 per Cent interest like a common note of hand, and made no further mention of the house, than that the Borrower had made over to him two deeds of his whole house, without specifying any definite term for repayment. It was however signed, both by Bhuwanee Ruttunjee, and by his Sons Rughoonath and Jetha Bhuwanee.

Respondents then exhibited their Decree, obtained in the Register's Court against Rughoonath Bhuwanee on the 14th November 1820 on a Bond for Rupees 202, being Rupees 100 advanced to his Father upon this house; A Loan of Rupees 51, with its interest, commencing 5 years after date of the Bond, and Rupees 51 more, which sums the Respondents were by the Decree allowed to realize out of the Proceeds of the house mortgaged to them, any balance then remaining being recovered from the Defendant.

The Bond, on the strength of which this Decree was given in their favor, was dated 3d Phalgoon Vud A. S. 1862, about a month later than that held by Appellant, and stated distinctly that the upper story (Meda) of this house was mortgaged to them

for

for Rupees 100 with leave to make use of the Tank, and yard, and Front and back doors of the house.

Witnesses were named and summoned but the Court declined calling them, as it was found that though the Appellant's Bond was of a prior date to that of the Respondents, the witnesses to it were dead, and he admitted that he was unable to prove any thing further than that he had lived in the house, whilst Respondents held a Decree against this very property. Appellant if he chose might sue the Heir of his creditor, the mortgager, but as he had failed to prove his superior title to the house, it was adjudged that the former Decree in Respondent's favor should be duly executed according to its provisions, and that Appellant should bear the Costs in the present suit, which was dismissed.

Decree 23d June 1821.

Appellant offered the two Deeds, and the witnesses whom the lower Court had declined to call, as well as others, to prove that he had assisted in repairing the house, but the Court determined from the Proceedings already held, to affirm the Register's decision, and dismissed the appeal.

Judge's Court in Appeal, W. A. Jones, *Judge*

Decree 12th Feb. 1822.

The House was finally sold in execution of the Zilla Court's Decree, previous to the admission of the appeal in the Sudur Udalut.

The Sitting Judge held on this case that Appellant had an undoubted right to prove the facts connected with his possession of the lower part of the house, as matter material to his cause. The Zilla Judge was therefore ordered to take such evidence as Appellant might be able to adduce upon the points of possession, and repairs, giving Respondents the opportunity of rebutting or answering it by other.

Sudur Udalut, Special Appeal, *Sitting Judge*. J. Romer, *Chief Judge*.

Appellant called five of the neighbours, who proved, that he since A. S. 1869 had always lived in the lower part of the house and had repaired it jointly with Respondents about three years ago.

ago, and that he even let out his part of the house about six years before Respondents declined calling any witnesses.

The Sitting Judge found that this evidence received from the Zilla Court, established the fact of Appellant's possession of the lower part of the house since A. S. 1869, whilst the Bond he had exhibited proved that the lower part was mortgaged in A. S. 1862 to Prubhoodas Kaoojee to whom he was Heir, by putting into his possession the Title Deeds of the house and making the lower part of the premises responsible for the money borrowed. The witnesses to this document were dead, but supported by subsequent possession, *the deed, as an old one, proved itself.* It appeared likewise from the Proceedings, that the whole house had been sold in satisfaction of a Decree held by the Respondents, to whom the upper part only of the house was mortgaged. Appellant's ouster under the attachment was therefore wrongous and the Sitting Judge pronounced his opinion, that possession of the lower part of the house should be restored to Appellant.

It was thereupon represented by Appellant that the Purchaser of the Premises had pulled the whole house down, cleared away the site, and disposed of the materials. Under these circumstances the Sitting Judge held, that as Respondents had made themselves liable in the usual manner for all claims against the property attached and sold by them, and since the house could not be restored to its former condition and Appellant reinvested with possession of the lower part, Respondents must answer to him for the amount of the principal sum secured upon it, Rupees 201, for there was not sufficient proof of any interest having accrued upon this amount, to warrant its being awarded to him though he was entitled to full Costs in all the Courts; with this opinion the Suit was referred to a Competent Court.

Competent Court,
J. Sutherland, Second Judge.
E. Ironside, Third Judge.

The Court concurring in opinion with the Chief Judge, reversed the Zilla Decrees, and adjudged, that Respondents should pay to Appellant 201 Rupees the amount of his mortgage proved

ed to have been on the lower part of a house since pulled down by the person who purchased it at a Sale by the Udalut on an attachment by Respondent, which rendered him responsible to the mortgagee. Costs in all the Courts, in proportion to the amount decreed, were awarded to Appellant.

Decree 6th Feb. 1823.

No. 77.

DHOOLLBUBH MOOLJEE ..... *Appellant,*

versus

RUGHOONATH KULYAN ..... *Respondent.*

Sudur Udalut, J. Kentish, *Acting Register.*

APPELLANT filed this Suit against Respondent, and his son named Manikchund Rughoonath, on the 9th February 1819, to recover from both, or either of them, the sum of Rupees 300, the balance unpaid of a note for Rupees 400 passed to him in A. S. 1870 or A D. 1814, by the son Manikchund Rughoonath, for whom Respondent rendered himself Security by an endorsement on the Bond. The Interest amounted to Rupees 45-2-0, and of the whole amount Rupees 145-2-0 having been paid at various times, Appellant sued them, as they had bound themselves, jointly or severally, to recover the rest of his money.

In the case of a person becoming Security for a Debto to his Creditor, and the Creditor executing a Decree (against both) by imprisoning the debtor alone, it was held by the Sudur Udalut, that the Creditor did not thereby lose his right to full interest until satisfaction of his decree.

Manikchund Rughoonath the son confessed the debt to have been incurred by himself, and begged that Appellant might be obliged to shew by his account what actually remained due. He at the same time denied that Respondent had made himself in any way liable for the debt.

Respondent for himself answered that he and his son had separated some years ago, and had no interests in common, and he distinctly denied that he was security in this instance for his son.

Appellant

Appellant exhibited the note, which bore the signature of Manikchund, and that of Respondent immediately below, with a note in his own hand " that he became thereby bound jointly " and severally with Manikchund, to pay the amount of the " note."

The Register found that the note was fully proved, and that the Respondent actually did render himself responsible for the amount. It was in evidence that Manikchund was worth nothing, whilst Respondent was sufficiently-wealthy, which appeared to be the reason of their throwing the whole debt on Manikchund, and Respondent had offered no proof whatever of his son having separated from him. The sum sued for was therefore decreed to be paid in the first instance by Manikchund with all Costs, and if he failed to do so, Respondent was declared liable to make it good as the Security.

Decree 26th March 1819.

Judge's Court in Appeal, G. W. Anderson, *Judge.*

In the Judge's Court this decision was affirmed on Appeal by Respondent, as the Judge held that he was bound by his Security, and had otherwise shewn no grounds why that decision should be interfered with. It was therefore affirmed against him with further Costs in Appeal, but interest from the date of the Register's Decree was not awarded, because it appeared that Respondent had carried the original Decree into execution against the other defendant Manikchund.

Decree 16th March 1822.

Sudur Udalut, Special Appeal, *Sitting Judge,* J. Romer, *Chief Judge.*

The Appellant preferred a special Appeal to try his right to recover interest upon the amount awarded by the Acting Register, until full execution of his Decree, stating that Manikchund was not put in Jail in execution of the Decree, but soon after the Suit was filed, in default of Security for his appearance, and that Respondent's Appeal to the Judge had stopped him from suing out execution at all. The amount due to him under the Regulations as interest, now amounted to Rupees 117-1-0, and this he prayed might be allowed him.

The Sitting Judge held, that had Respondent even been confined

fined in execution, he could not concur with the Zilla Judge, that the simple act of taking a Defendant in execution, and putting his person in confinement, barred the Plaintiff from the right of receiving under the Regulations, the fixed Interest of one per Cent per mensem on all sums recoverable under a Decree, affirmed as this Appellant's was, on the Appeal. The person of the Defendant being taken in execution and no payment following, the right of the Plaintiff to recover his debts with interest remained just as it was, but he incurred a further expense of feeding his debtor while in prison. The Sitting Judge under this view of the case referred it for amendment in the point of interest, to a Competent Court

The Court agreeing with the Chief Judge in his view of the point at issue, annulled the Zilla Judge's Decree by awarding to Appellant, under the provisions of Section 26th of Regulation 5th of 1820, the interest disallowed him, viz. Rupees 117-1-0 as well as interest up to the date of this Decree, total 129-2-9 to be paid him by Respondent with Costs.

Competent Court,
J. Sutherland, *Second Judge.*
E. Ironside, *Third Judge.*

Decree 23d Jan. 1822.

N°. 78.

GUN JOSHEE BAL JOSHEE MAL-GOONDKUR..... } *Appellant,*

VERSUS

His Step Mother SUGOONA BAEE, Widow of the late BAL JOSHEE MALGOONDKUR..... } *Respondent.*

RESPONDENT filed her suit against Appellant under date 6th July 1821, to recover from him Rupees 25,800 as her share of what her late husband died worth. She stated that Appellant

North Konkun Udalut,
Pauper Suit,
E. H. Baillie, *Judge.*

lant had been for 25 or 30 years separated from his Father, and resided during that time at Poona. Bal Joshee remained for some time at Malgoond, but afterwards went to live at Kulyan and then at Tanna. When Bal Joshee fell sick he drew up a Mrit Putr, or "last Will and Testament" in presence of Gopal Joshee, and called Appellant down to him. He died shortly after at Kulyan, and Appellant by his deceit persuaded Respondent to deliver all the property into his care and they lived together very amicably for some time, till Appellant claimed the whole property as his right and took away from her the Key of the Room in which it was kept, saying she should have a maintenance but no more. When Respondent sat in Dhurna to obtain redress, he offered to give her five thousand Rupees to give up her claim. Respondent refused as having an equally good right as himself to a half, seeing they were both childless. Appellant then quitted the house, and she complained to the Soobedar who wished to make him swear by bringing some of the Toolsee plant from the Rameshwur Pagoda, that he had not taken the property out of the house, but he fled to Malgoond, and nothing had been done since. The property Respondent specified to consist of 12,000 Rupees worth of ornaments; Rupees 4,000 in Mohurs and Venetians; Rupees 34,000 in cash, Pledges &c. total Rupees 50,000, besides which she had a claim to share the profits of a Wurshasun, and some Inam, yielding about Rupees 1,600 per annum.

Claim by a Widow against her step son for half her late husband's property. Decreed in part by the Zilla Court on the strength of a Will, or settlement, by the deceased, with an opinion of Shastrees upon the Will. Reversed by the Sudur Udalut for want of proof.

Appellant in answer called upon Respondent to prove by the usual and necessary documents that he and his Father made a partition of the family estate, which he denied had been ever made. Respondent surrendered all the estate to him by his Father's command, two years before his death, and the property was not worth what she stated, but whatever its value might be, Respondent was entitled to nothing but a maintenance from him, to whom above the property of his Father belonged of right.

Respondent

Respondent admitted that no Deeds of division were passed between Father and son, but she would prove that Appellant lived and ate separate from his Father. She admitted also that the Mrit Putr was surrendered by her with the other family papers to Appellant when he cajoled her into putting the estate into his hands.

A copy of the Mrit Putr which she exhibited, bore date the 10th Magh Sood 1725 Arba Miyaten-wu-Uluf, A. D. 1804 and was to the following effect. "I Bal Joshee Mal-"goondkur, fixed inhabitant of Kulyan, but at present resid-"ing on Sashtee, (Salsette,) being ill in Health, and "become old, and considering also that my son, who should "live with me, and take care of our affairs, neglects to do "so, have now made out a Vyuvustha, or settlement of my "family and worldly affairs, and business.

"*First.*—I have made out a separate list of my outstanding debts, both on loan and Bond, which must be attended to.

"*Second.*—I have two Inam Villages and a Wurshasun from Government, of which I make a settlement (Vyuvustha) upon that person who shall perform the Pootrutvu (or duties of a son) or funeral obsequies, for me.

"*Third.*—I have made out a separate List of my effects and ornaments and they must act up to it.

"*Fourth.*—I have made a memorandum for the partition of the silver ornaments, which they must act upon.

"*Fifth.*—They must execute the provisions of the settlement of the Cast.

"*Sixth.*—I have bestowed in Gift to my wife, the ornaments on her person.

"*Seventh.*—The property of my daughter-in-law is in her possession. Let her live in the family and receive a maintenance,

nance, and she shall have Rupees 25 per annum to give away in charity.

" *Eighth.*—Respecting the hereditary village Josheeships, which have descended to me in the Kulyan and Malgoond districts.

" *Ninth.*—With the House and Garden, at Kulyan.

" *Tenth.*—And the house at Poona.

" *Eleventh.*—Whosoever shall perform my funeral obsequies (Pootrutvu) shall enjoy them with one of the houses, and my wife shall take the other House."

The (Copy) Memorandum of the debts shewed Rupees 1,582, due to the deceased, who thereby divided the amount equally between the parties, his wife and son. In that of the ornaments he directed Rupees 2,592 of their value to be spent in Charity, and remainder to be divided, and given Rupees 1,575 to the person who performed the Pootrutvu, and Rupees 1425 to the Respondent. Rupees 4,000 Cash was put down without assignment to any one. The third memorandum, made the Jewels and Household Effects worth Rupees 10,530, including Rupees 800 to be spent on a Pilgrimage, and the balance of this was not assigned to any one. None of these papers bore the signatures of any witnesses.

Respondent likewise gave in a letter from the deceased, dated 5th Magh Vud, probably written ten days after the Will, to " Aba Joshee," Respondent, desiring him to come and receive charge of the Estate.

Appellant gave in a quotation of several passages in the Shastr, relating to the limited Right and power of a Widow in cases of inheritance, and her dependance on her relations.

He wished also to prove that the Suit was inadmissible because the Inam was not valued at ten years produce according to the Regulation,

Regulation, but the Court overruled this plea on the grounds that the Inam was not the subject of dispute at present.

Lukshumun Gungadhur Joshee deposed that Bal Joshee came to Tanna in consequence of Holkar's war in 1725. Witness had heard of the execution of the Mrit Putr, but never saw it; thought the copies of the Papers might be in Appellant's hand writing.

Joteeba Suyajee More deposed, that in 1738 he was in the service of Appellant, and recollected a dispute between him and Respondent and his being employed by Appellant to carry from the house at three different times three Bundles, which he deposited with one Ram Sawunt. That Appellant then left the house, and took him with him; could not say whether Appellant took away any papers with him when he took away the bundles, nor what was in them.

Ramajee More was formerly in the service of Appellant in 1738, did not know of the dispute between the parties nor what things were taken out of the house, but recollected that in the month of Bhadrapud that year he and the other witness took three small bundles which were given to him by Appellant, from Appellant's house to Ram Sawunt's house; could not say what the bundles contained. The parties at that time lived together but Respondent was absent on a pilgrimage, and witness could not say whether they ate together or not; he supposed they were united, as they both used to give him orders.

Bala Gunesh Seth deposed, that he had heard Bal Joshee say that Appellant and Respondent were to divide about 12,000 Rupees of ornaments between them, and that Aba Joshee's (Appellant's) wife had died without bringing him any family and he had not married again; Respondent was to adopt a son, in case Appellant did not marry. Witness had seen Respondent wear very valuable ornaments, and heard her husband say he was worth 40,000 Rupees. He and his son Appellant did not agree, and the latter always cooked his own food.

Kaseenath

Kaseenath Govind Sane deposed that the third memorandum was drawn up in his presence, and that some writing on it was in the hand writing of Appellant.

Gopal Joshee deposed that he lived with Bal Joshee during the latter years of his life, and that he and his son, Appellant, ate, and conducted their affairs separately. Deponent and Bhaskur Punt Putwurdhun witnessed the Mrit Putr, which was signed by Bal Joshee who was in bad health but in his perfect senses. The terms of it were that Appellant should take the Inam, and the Appellant and Respondent, should share the personal property between them. It was drawn up after Appellant had been in vain sent for four or five times, and that was the reason of his name not being mentioned in it, and it was intended to give opportunity, if he did not come, for his brother at Malgoond being appointed to perform the funeral and be invested with the Inam. All the ornaments were to be divided equally, with the exception of those on Respondent's person. He proved the copy to be in Appellant's hand writing, and a true copy of the original.

The Court next recorded the proceedings of the inquiry formerly instituted into the state of Respondent's funds, previous to admitting her to sue in formâ pauperis. Among the witnesses called on this occasion was Ram Sawunt, above mentioned, who deposed to Appellant's having been called before the Soobedar in 1738, and to his leaving the district in disgust at the Soobedar's proceedings and to avoid an Inventory being taken of his property. Witness admitted, the Appellant deposited with him effects to the value of between 3,000 and 4,000 Rupees which he brought in small bags.

The Court asked the Shastrees,

First.—Whether in the present case the ornaments noted in the third memorandum belonged to Respondent or to other Heirs of the Testator?

Second.

Second.—Whether a widow was entitled to inherit a share of the Real property of her late husband?

Third.—Whether after a widow had received a share of property, as devised to her by will, she would be entitled to a further maintenance besides from her son?

The Shastrees answered These are the words of the Mitakshura, (1) " That which a husband has of his own accord " given to his wife, she may after his death either enjoy, or " employ for any purpose she please, or give it away, with " the exception of real property." Again, we find the words of Munoo in the Mitakshura (2) " Such ornamental apparel " as women wear during the lives of their husbands, the heirs " of those husbands shall not divide among themselves; they " who divided it among themselves fall deep into sin." (Chap. 9th v. 200) From these two passages it appears that ornaments freely given by a man to his wife, are her's, and cannot become the property of the (other) Heirs.

On the second question we find (in the Smritee Chundrika) " If a woman be Vritusth, a virtuous Widow, even if a partition " have been made, still she is not fit to recover real property," (which law is opposed and combated both by Munoo, the Mu-yooku, and Purisishthu, and is not noticed in the Mitakshura) and in opposition to it the following passage, " a Widow whose " husband is dead, and who lives a virtuous life, shall receive " the Estate, or already separated share (Ounsh) of her hus-" band." From these passages it is evident that a Widow has no Right to receive a share of (undivided) real property.

On the third question they said, if the Widow have received the share allotted to her in the Mrit Putr, the Son is not obliged to provide her with Food, Raiment &c. However, if a stipulation be made in the Deed, he must give it.

The

(1) Mit. Book second, leaf 46th, page 1st, line 9th, Cole. Mit. 254.

(2) Book second, leaf 46th, page 2nd, Cole. Mit. 273 375.

The Court considered that the evidence of Lukshumun Gungadhur, Bala Gun Seth, and Gopal Joshee, proved Respondent's case, for the first shewed the Will, and second Memorandum to be in Appellant's hand writing; the next, who was a witness for the defence, said that Bal Joshee left Jewels to the amount of Rupees 10 or 12,000, that they were to be the property of Respondent, his Widow, and that the remainder of the property, which he understood to be above 40,000 Rupees, should be equally divided between the parties. The third proved the Copy of the Will produced in Court to be a true Copy of that made by Bal Joshee, and that the Jewels specified in the third Memorandum, he knew to have been in possession of Respondent. On these facts and the Vyuvustha of the Law Officers, it was decreed that Appellant should pay to Respondent Rupees 9,210 amount value of the Jewels in the third Paper, and Rupees 1,425, her share under the first, total Rupees 10,635 with her Costs on that sum, and should bear the remaining Costs, including those that would have been incurred had not Respondent been allowed to sue in *formâ pauperis*.

Decree 29th March 1822.

Sudur Udalut, *Sitting Judge*, J. Romer, *Chief Judge*.

The Sitting Judge observed that from the Proceedings it appeared that Bal Joshee died about seventeen years ago, and that the parties, his Son and Widow, lived together for nine or ten years afterwards without dispute. That about eight years ago, Appellant on some disagreement with Respondent, quitted the house, which they then jointly occupied at Kulyan, and had never since reoccupied it, Respondent remaining in sole possession, and from this time the true matter at issue between the parties was to be dated. The Law of the case, as delivered by the Zilla Shastrees, was clear enough, but he took a different view of the facts from the Zilla Judge. From the depositions of Joteeba and Ramajee More and of Ram Sawunt, it was evident that Appellant, on quitting the house at Kulyan, left it in the possession of Respondent, and took with him property to a considerable amount, but it was too much to assume, that this was Respondent's portion of her husband's Effects given to her by

by him, and not the Appellant's own share of his Father's Goods. The house itself being immoveable property, did not belong to her. The Zilla Judge's Decree however made the Appellant responsible for Jewels, Cash &c. of which there was no proof that he ever had a joint, or any, possession after the dispute and separation from Respondent. Previous to that event, he might be considered in some measure as having a joint possession, but subsequent to the separation, the proof, as far as it went, was in favor of the fact that the Cash and valuables which he deposited with Ram Sawunt were his own property.

The case was referred to a full Court by the Sitting Judge, with his opinion that there was an entire failure of evidence to sustain the Zilla Judge's Decree.

The Court agreeing in the view of the Chief Judge, reversed the Decree of the Zilla Judge and nonsuited Respondent in her original claim.

Competent Court, J. Sutherland, *Second Judge*. E. Ironside, *Third Judge*. Decree 22d Feb. 1823.

N°. 79.

JIOO BAEE BHANOO, Widow of BALAJEE JUNARDHUN BHANOO (Nana Furnuvees,)..... } *APPELLANT,*

VERSUS

SUKHARAM BUCHAJEE BHANOO.... *RESPONDENT.*

APPELLANT on the 15th August 1821 filed her suit to recover from Respondent a Hamlet, and 15 Beegas of land given to the Grandfather of her late husband in Inam by one of the Descendants of Seevajee. The name of the village in which the Hamlet was situated was Velus, in the Turuf of Vosvee, and Talooka of Bankot, and the land had been she said in the family ever since, as would be apparent from her father-in-law, Junardhun Bullal, having been mentioned in the Treaty

South Konkun Udalut, V. Hale, *Judge*.

Claim by the Widow of Nana Furnavee for a Hamlet

and 15 Beeghas of Inam land in the village of Velus Talooks Bankot.
Dismissed on proof of possession by Respondents for upwards of 20 years.
Decree affirmed by the Sudur Udalut.

Treaty between the Peshwa and the Honorable Company for the cession of Bankot in the year Subha Khumsaeen, or A. D. 1757 as the Inamdar, and whose rights were specified therein. Her husband held the village till his death, and employed an Agent to manage it. In Tissa Tissaeen or A. D. 1799, Chimnagee Narayun Bhanoo held if for her husband, but Respondent violently dispossessed that person's agent in the year Summan Ashur, and had held and enjoyed it ever since. She valued the Inam at Rupees 200 per annum, or Rupees 2,000 for ten years, and sued likewise for Rupees 1,000 the profits enjoyed by Respondent for four years.

Respondent said that Appellant's Branch of the family and himself were descended from one common ancestor, who had four sons, and they separated by mutual consent dividing every thing. The Inam and land in dispute had come down through the descendants of one of them to himself, and remained always in his possession, and the claim of Appellant was totally unfounded.

Appellant still persisted that Respondent had nothing to do with the Inam, and, that her husband's Grandfather, and no one else, had received the Grant and transmitted it in uninterrupted possession, to her husband.

The Sunnud, or Grant exhibited by Appellant, bore date 9th Asvin Vud, Vilumbee of the Sumvutsur, or 45th of Jooloos, (the year of Seevajee's accession,) and ran in the name of Naro, Ramajee, and Balajee, Muhadeo, Muhajuns and Koolkurnees of Velus, granting to them Rent free for ever, a Hamlet and 15 Beeghas of land in that Village belonging to them and for which they had formerly been obliged to pay Revenue to Government.

Another Sunnud dated 1st Rubee-ool-Uvvul Isne Ashreen Muyatwŭ Uluf or A. D. 1721, from Bajee Rao (Bullal) Peshwa, confirmatory of the above, and promulgating its contents.

And

And one of the same year from Kanojee Angria, further confirming this Grant. She likewise gave in accounts for the years Isne, Sittu, and Subba Subbaeen, and Sunman Tissaeen, or A. D. 1772, 6, 7, and 98, all in the name of Balajee Junardhun her husband.

In the copy of the Treaty between the English and the Peshwa in the year Subba Khumsueen or A. D. 1757 which Appellant exhibited, the 10th article stipulated, " that the " Village of Velus should remain in the undisturbed possession " of Junardhun Bullal Phurnuvees, and the villages of Nand- " gaon and Kopre were thereby given to the Company in ex- " change for it."

Respondent on his part exhibited, an original Kowl from the Resident at Bankot, dated 25th July 1764, addressed to Huree Rughoonath Muhajun, as a Lease for ten years of certain ground in the village, to be held Rent Free for that time by him, and to bear a Revenue of Rupees 22-2-0 per Beegha after that term had expired.

And an engagement passed by Pandoorung Gunesh Koonte to Sukharam Punt Aba Muhajun (Respondent) for the just management by him of the Muhajunkee, Salt Pans, Lands &c. intrusted to him by the latter. It was dated Thursday 2d Udheek Shravun Sood 1728.

He likewise produced the village accounts for the year Tissa Tissaeen, or A. D. 1799; Subba, or 1807; and Summan, or 1808, all in Respondent's name.

Appellant called six witnesses. Sudaseo Vinaik said he was a Wuttundar of Velus, and knew that the village was held in Inam by Nana Furnuvees, who managed it a few years by an Agent named Apajee Punt Kootoombe, who was succeeded by Pandoorung Punt Koonte, who held it till about four years ago, and witness had heard him say that Respondent had taken it out of his hands. Witness was not then in the village.

Pandoorung

Pandoorung Gunesh Koonte stated that about 23 years ago he received charge of the Village from Chimnajee Narayun Bhanoo, Respondent's Cousin, who told him he would receive orders from Nana Furnuvees respecting it. He held it about a year under the direction of Chimnajee Narayun, and for six months received his orders direct from Nana, until his death, after which his Karbaree, Ragho Punt, gave him the necessary instructions. In about three months he was desired by Ragho Punt to act under Chimnajee Narayun, who came to the Village. Two years and a half afterwards the Village was taken away, and put into the hands of Apajee Punt Kootoombe. In Subba or A. D. 1807, witness was again put in charge and held it for 8 years under Sudaseo Punt, the Agent of Chimnajee Narayun at Poona, who, when Appellant sent Wiswunath Bullal to manage the Inam, told witness he could not help it, as it belonged to her, and it must be given up to her. Witness represented to Appellant herself, who then came to Velus, how long he had held the management of it, and in Khumsu Ashur, A. D. 1815, she put him in charge and he held it from her for three years, paying the profits to her Karkoon, Huree Punt Datar. Respondent, who had lived since Subba A. D. 1807 at Velus in order to manage his own Estate, consisting of four salt pans, took forcible possession of the Appellant's Inam, Salt pans &c. Witness admitted that he had managed the Respondent's Salt pans for him, under the engagement exhibited by Respondent.

Krishnajee Shunkur, knew that the Inam was managed for Nana Furnuvees by Gunesh Punt Koonte, and afterwards by his son, the above witness, whom Respondent dispossessed, under what title he did not know.

Jaeeram Pandoorung Kootoombe proved the management to have remained in the hands of Pandoorung Punt Koonte and his Father for many years, and he had heard him and Respondent disputing about four years ago, since which time Respondent

dent had kept the village. This witness said Appellant was entitled to a Hamlet, and Rice land which had descended from the ancestors of Nana Furnuvees.

Of Respondent's witnesses, Keshow Gunesh Koonte declared that Nana Furnuvees had never managed the Inam in dispute during the 24 years witness had resided in the village, but that Chimnajee Nurayun had held it, and that Pandoorung Gunesh held it at one time from him, at another from Respondent. Recollected the dispute between Respondent and Pandoorung Gunesh in consequence of which Respondent took the Inam away from him; he could not say what the dispute was.

Visram Tondulkur, a Peon on the Collector's Establishment deposed that he had held from Respondent a field of Inam land for the last 15 years, and paid the Rent of it to him, for the first eleven years through Pandoorung Punt, and for the last four to himself direct.

Balajee Gunesh Kootoombe, deposed that before the last twenty years Nana Furnuvees had held the Inam in dispute for twenty years, and witness managed it for him until he was ordered by him at Poona to consider himself placed under the orders of a Karkoon of Naro Chimnajee. Witness said Pandoorung Punt was Respondent's Agent until turned out, on Respondent's taking the management into his own hands.

Balajee Trimbuk said that Nana Furnuvees gave up the Inam to Naro Chimnajee in A. D. 1799 as that person's Wuttun; witness said it came into Nana's hands when his Uncle, Huree Rugoonath, set out for Bunares in Shalivahan 1695 or 96 and intrusted it to him.

The Court was of opinion, that with respect to the Sunnud or Grant of Inam, no sort of evidence had been adduced on either side to prove their descent from the three original Inamdars. It was however conceived that the evidence of Pandoorung Gunesh, on which alone Appellants could be said

said to rest, was false and wholly unworthy of credit. It utterly disbelieved the impossible statement, that under the eye of the Bankot Residency, a British Possession, the act of violence Appellant complained of, in that Respondent had seized the Inam from that witness, was committed, or could have occurred unnoticed. Under the plea of uninterrupted possession on the part of Respondent for a period of upwards of 20 years, the Suit was dismissed with Costs.

Decree 6th April 1822.

Sudur Udalut, Sitting at Rutnagiree before T. Barnard, *Fourth Judge.*

Appellant explained her connection with the original Grantees as follows. Wiswunath Punt, the representative of Naro Muhadeo, was living at a village at the foot of Lohgurh—and she presented a Mokhtiyar namu from him. The representative of Ramajee Muhadeo was at Benares. The third Grantee, Balajee Muhadeo, was father of Junardhun Bullal, who was the father of Balajee Junardhun, alias Nana Furnuvees her late husband. She said Respondent's family was not mentioned in the Grant, and she had clearly proved that the Inam belonged to her and had been in her possession within the last four years.

From a Genealogical Tree produced in Court by Appellant, it appeared that the Parties were both descendants from the same person, but he was not the Grantee of the Inam, and Respondent could not deduce his descent from the Grantee who was in Appellant's line—Several witnesses had deposed that the land was in Respondent's family's possession within the last 20 years, but there were others to prove that it was in many respects of an indirect and confused nature—The issue rested solely on the point of possession by Prescription, as the original Grant had been lapsed completely by the intermediate occurrences.—The Court being unable to distinguish the merits of the proof on their side, did not choose to interfere with the original decision, which was therefore affirmed with Costs.

Decree 7th Dec. 1822.

N°. 80.

JETHA BHAEE MOOLJEE,.....*Appellant*,

VERSUS

HUTESINGH LALA HURUKCHUND; with UCHHUTLAL, UMROOTLAL, and GOVINDLAL, Heirs of SHUMBHOOLAL.....} *Respondents.*

Ahmudabad Udalut, W. A. Jones, *Judge*.

ON the 9th July 1821 Appellant filed a Suit against Respondent, Hutesingh Lala Hurukchund, for Rupees 4,588-3-0 due as follows.

Respondent Hutesingh, and Shumbhoolal, the father of the other Respondents, set up a mercantile House called from their joint names, the Firm of Hutesingh Shumbhoolal. Appellant's father Mooljee, and Uncle Poorshotum, had each an account with this House, which on the 2d Kartik Sood 1874, owed to the latter 4,100 Rupees, and to the former Rupees 6,180-3-21, and the Firm had passed them a writing for the amount, as "cash deposited with the Firm by a Broker." Appellant declared himself entitled to recover this money, as Heir both of his Uncle and Father, and saying that Shumbhoolal, the second Partner, had fully discharged his half of the debt, or Rupees 5,140-1-90, now sued Respondent, the other Partner, for Rupees 4,588-3-0 the balance of the remaining half, after deducting a payment of Rupees 1,486-3-61 up to the 6th Jesht Sood 1877, and a Deposit, or disputed Item, of 252-1-64 on that date, but charging Rupees 459-1-15 for interest, at 7 anas per month and Rupees 689-1-20 the Ankra, or difference between the Ant (1) and the payment in Cash.

Respondent

Suit by a Crediter against one of two partners of a Firm for his half of the debt, the other partner's half having been paid.

Dismissed by the Zilla Judge under precedent of Report No. 52.

Appellant allowed by the Sudur Udalut to include the Heirs of the other partner, and the Suit referred.

Zilla Judge upheld the applicability of the precedent, to which the Sudur Udalut declared this case an exception, and decreeing in Appellant's favor against one partner alone, declared him liable for the Costs of Appellant, and of the other Respondents called to defend the case in the Sudur Udalut.

(1) Ant, Ankra, and Waida Vyapar, are three sorts of dealings peculiar to Goojurat and Kathiawar, and have been till lately imperfectly understood. Ant is said to be a fictitious currency, or Book Credit, in which Bills of Exchange, and Dealings in silk and Cochineal [chiefly] may be paid, by the option of the holder, and varies according to the Rate of Exchange of the day, and the state of the Coin. The difference received on cashing a Bill in Ant, is termed Ankra; Waida Vyapar is precisely the illegal gambling in the Funds called Stockjobbing in England, except that it is only upon the price of merchandize, and the settling day is determined by the bargain. It has been put a stop to at Ahmudabad by Proclamation, and the Merchants there have lately agreed to abolish dealings in Ant.

Respondent pleaded ignorance of the transaction, urging that it was contrary to the Rules of business to pass any such writing as Appellant alluded to; further, that the house was bankrupt, and their Books and Effects were surrendered to their Creditors.

Appellant again urged that if the claim were not perfectly just, the other partner would not have paid his share, and further to prove the debt, gave in the acknowledgments or Receipts, for Credit in Ant, given to the Father and Uncle, dated 2d Kartik Sood 1874, signed in the name of the House, by their Goomashta Adeetram, with Receipts written off on the backs of each for Shumbhoolal's share.

The Court, without going into proof, decided that the Appellant's demand was against the Firm, and the Court could know nothing about Shumbhoolal's share having been paid, since in a partnership there were no shares. Appellant's suit was therefore dismissed with Costs, he being left still at liberty to sue the whole Firm jointly if he thought proper.

Decree 29th March 1822.

Sudur Udalut, *Sitting Judge.* J. Romer, *Chief Judge.*

Appellant, as the first point necessary in his appeal, prayed permission by motion, to be allowed to include the Heirs of the Respondent's Partner, in the Appeal. This the Sitting Judge under all the circumstances of the case, resolved to permit, and directed the Zilla Judge to give notice to the Heirs of Shumbhoolal, "that they had been joined as Respondents "in this Appeal with their Father's Partner, and were re- "quired to appear and defend it, in person or by Wukeel." A Wukeel appeared for the Respondents, sons of Shumbhoolal, but the other Respondent Hutesingh, late the Defendant, allowed judgment to go by default.

The other Respondents pleaded, that they were now only of the ages of 20, 18, and 15, whilst their Father died 10 years since, and the Firm became bankrupt only three years ago, up to which time Respondent Hutesingh had carried on the business from their father's death. After the Bankruptcy,

the

the creditors called on them for their half of the debts, as partners holding a half share, according to the custom of the country; they wished to avoid this extremity, but the creditors pressed them until they agreed to have a meeting at Respondent Hutesingh's house. At this meeting, the debts and credits were divided into two shares, their share of which these Respondents paid off, or compounded for, within three months after the settlement, and received acquittances from all their creditors, one from Appellant among the rest, which they would exhibit. They pleaded therefore that neither in equity nor by Custom of the country, had Appellant any just right to sue them, since they could not be expected to pay the money over again, and it was the universal custom of the country that each partner, of a Firm become bankrupt, should be held responsible for his own share, and for no more.

Being called on for the acquittance given them by Appellant, they gave in an unattested extract from their account Book then in custody of the Zilla Court, which Appellant admitted to be correct, but it was not received by the Court, because not authenticated as a true copy.

The Sitting Judge was of opinion that the original default of Appellant, in not joining the names of all the Partners or Heirs of the Firm he sued, was, under the circumstances of the case, a mere formal omission, and not a substantial defect, and that it might have been amended in the lower Court during the progress of the Suit, as had been done in this Court. (1) The original Suit, should have been laid against the Firm of Hutesingh Shumbhoolal, including of course the names of all the sharers, Heirs, or Partners, for the whole amount of the debt. It was then competent for Appellant to show such payments, or admit such acquittance, as might have been made by, or allowed to, particular individual partners.

with

(1) The necessity therefore no longer exists for throwing out a Suit for this omission, as declared in the former precedent, Report No. 52.

with the knowledge of all concerned, and to set them off as credits to these persons, or to the partnership. The balance then due by the Firm generally, would, supposing the shares to be equal and the payments, or acquittances by a particular partner or partners to amount to one half, become a just debt against the remaining partner or partners, and recoverable from them alone, under a Decree reciting the circumstances, and made in the name of all the persons included under the trading name of the Firm.

But from Hutesingh having failed to appear in the Sudur Udalut, and the Zilla Judge having dismissed the original Suit on his view of the default, without Appellant's having had an opportunity of proving his claim, and from the circumstances under which the three last Respondents had settled for their share, the Court was unable to say what sum, if any, was due by Hutesingh. The case was therefore referred to a competent Court, which passed an Interlocutory Decree reversing the Zilla Judge's Decree and directing him to try the Suit on its merits.

Competent Court, J. Sutherland, *Second Judge*, E. Ironside, *Third Judge*. Interlocutory Decree 8th May 1823.

Judge's Court, Suit Revised, W. A. Jones, *Judge*.

The Respondents, Heirs of Shumbhoolal, completed the pleadings in the Zilla Court by filing an answer to the effect of that delivered by them in the Sudur Udalut, and reciting the facts of the case as stated in the original case.

The Court received from Appellant, Extracts from the Books of his Father, and of his Uncle, being their respective accounts current with the Firm of Hutesingh Shumbhoolal, from whose Books these persons' accounts were then extracted.

Respondents called five witnesses, to prove that they had paid their share of the debt, and that they owned a half share of the Firm.—As these points were not denied, the Court only examined one of the witnesses, who proved them.

Respondents then gave in statements shewing the division of the debts and claims of the Firm, and two Farighkhuts, being those

those passed to them, by Appellant's Father and Uncle, on the 8th Asvin Sood Sumvut 1873, as Receipts for their half, including interest, of the debt due to those persons by the Firm.

Each half share of the Debts of the Firm was Rupees 41,616-1-51 and the half of the outstanding debts divided to each, amounted to Rupees 17,651-1-42. The Goomashta of the Firm proved the Farighkhuts, which were written by him by the order of his employers, and corroborated the facts of the case generally.

The Court was of opinion that the Appellant's claim was just, as sued for, and the assertion of the Heirs of Shumbhoolal, of their having paid half of the debt in question was true, but as the instructions from the Sudur Udalut, as set forth in its proceedings in Appeal, Report No. 52, " prohibited the practice " of passing Decrees against one member of a Firm instead of " the whole Firm," the amount of the share paid by the Heirs of Shumbhoolal must be considered in the light of payment made by the whole Firm in liquidation of the claims against it. It was therefore held, that Hutesingh and the Heirs of Shumbhoolal were equally responsible for the balance of the debts, they being partners of that Firm by which the debts in question was contracted, and the sum sued for, Rupees 4,588-3-0, was decreed to be paid to Appellant by Respondents, Hutesingh and the Heirs of Shumbhoolal.

Second Decree 12th July 1823.

The Sitting Judge observed, that the Zilla Judge had applied a general Rule to a special case, without adverting to those circumstances which, duly considered, would have the effect of completely taking the case out of the operation of this Rule, and which the proceedings of the Sudur Udalut were in fact intended to give the parties an opportunity of doing, should they be able to avail themselves of it, by establishing the truth of certain facts, which at that time only appeared as allegations, but had now been satisfactorily established in the Zilla Court.

Sudur Udalut, Case Resumed. *Sitting Judge*, J. Romer. *Chief Judge*

The

The Sitting Judge therefore again referred the case to a Competent Court to have the Zilla Judge's second Decree amended to the extent of ordering that the sum therein adjudged to be justly due to Appellant, should be paid by Respondent Hutesingh Lala Hurukchund alone, with full Costs to Appellant. With respect to the new Respondent's Costs, the Sitting Judge gave his opinion, that as all the proceedings at law and their consequent expenses had been occasioned by the conduct of Respondent Hutesingh, he ought to make good to the other Respondents the amount of their Costs.

Competent Court, J. Sutherland, *Second Judge.* E. Ironside, *Third Judge.* Final Decree 11th Dec. 1822.

The Court fully concurred in opinion with the Chief Judge, and passed a Decree to the above effect, granting Appellant also interest at 9 per Cent from the date of the Zilla Judge's first Decree, and awarding payment of his, and of the other Respondents', Costs by Respondent Hutesingh.

N° 81.

MADHOWRAO MEGHUSHYAM JOSHEE CHASKUR, ... } *Appellant,*

VERSUS

YUSWUDA BAEE, Widow of the late MADHOW RAO NEELKUNTH JOSHEE CHASKUR. ..... } *Respondent.*

North Konkun Udalut, E. H. Baillie, *Judge.*

THE Respondent was Plaintiff in the Zilla Court, suing Appellant, and another person, named Ballajee Krishn Patunkur, under date 24th November 1819, for Rupees 4,673-3-0 as the value, or ten years' profits, of her Huq upon the customs in the Kulyan and Bhewndee Prants, which these persons had attempted by fraud to secure to themselves.

Claim by Respondent for the Zukat Sur Patelkee Wuttun in the Kulyan Bhewndee

Respondent styling herself the Widow of "the Sur Patel of "the land Customs in the Kulyan and Bhewndee, and Juwar "Prants," stated that the office had been in the family from

Prants of the North Konkun. Dismissed on plea of Appellant's better title by inheritance. Decreed to Respondent on the ground of long possession, and acknowledgment of her right by the Peshwa's Government.

75 to 80 years, even after the change of Government, until the end of the month of Asvin, *Summan Ashur*, or September 1817. At the beginning of *that year* she sent the Defendant Ballajee Krishn Patunkur as her managing Agent into the Konkun, but instead of acting with fidelity he conspired with Respondent, and deceiving the Collector, got Respondent *Madhow Rao Joshee's* name entered on the Books, and a Sunnud issued on it to Purusram Bhikajee Kharkur, the Farmer of the Zukat or Customs, to put him in possession. Respondent on hearing of this deception, sent another Karkoon to supersede Patunkur, who refused to surrender his charge. A complaint was presented to the Collector, who advised her to sue him for recovery of that year's Huq, which he would keep in deposit until decision of the cause. The total receipts for the year were Rupees 1,403-1-49½, and deducting charges of Collection the actual profit was Rupees 467-1-49½. Respondent prayed for recovery of this sum, and restoration of the Sur Patelkee Wuttun.

Appellant, taking upon himself the titles claimed by Respondent, thus stated his case. Muhadajee Krishn Chaskur, the Head of the family, had three sons, the eldest of whom was Balajee Muhadeo, Appellant's Grandfather; the second Ramchundur Muhadeo, and the third Krishn Rao Muhadeo. These three persons, but particularly the Eldest, held high offices under the Sattara and Punala Rajas and other chiefs, and obtained from them large grants, some of which were in the name of all the Brothers, some in that of the Eldest, or one of the other Brothers, alone. Ramchundur died without issue; Ballajee had a son Meghushyam Bullal, the father of Appellant. Krishn Rao had a son, Ramchundur, who being childless adopted Respondent's late husband, Madhow Rao, who took his adoptive father's name of Neelkunth. This adoption was made without consent of the family or permission of the Peshwa, and Madhow Rao himself being childless his rights derived from the adoption were altogether null. The Peshwa, viewing it in this light, imprisoned

prisoned him. Muthoora Baee, the Widow of Ramchundur Krishn Rao, and Aunt of Appellant, got permission from the Peshwa to adopt a son for her husband. She accordingly executed a Deed on the 1st Ashadh Sood 1727, constituting Appellant her son, and Heir to all her property; she soon after died, and Appellant performed her funeral ceremonies, whilst Respondent's husband actually died in confinement. He admitted that Neelkunth Rao, and Respondent's husband, his adopted son, held the Sur Patelkee in their own names until 1st Ashadh Sood 1729, when Gunga Baee, mother-in-law of Respondent, executed another Deed in his favor, and from that date Appellant took possession of the Wuttun but left it under the management of Naro Punt Datar, own brother of Gunga Baee, and put in Bugajee Oomajee her Agent to act as Sur Patel for him. On the change of Government Appellant got Muthoora Baee's Deed presented to the Collector, who continued him in possession under it, and he employed the other Defendant, as being a trust worthy man, and acquainted with the duty, by having acted for Respondent formerly. This was his title to the Wuttun.

The Defendant Patunkur said that Respondent sent him from Poona after the change of Government to take charge of the Sur Patelkee, but the person then holding the customs refused to surrender it. On the 1st of Kartik Vud the Defendant again sent a person to take charge of the custom House at Gorepoor, but he was turned out by Kharkur, who demanded an order from the Collector. Defendant was going to procure it, when Appellant interfered, and as Head of the Chaskur family forbid him to do any thing further in the matter, when he, the lawful possessor of the Wuttun, was present in person. Defendant had therefore no remedy but to give way to Appellant, as he was only an Agent for the principal against whom Appellant thus preferred a claim.

Respondent pleaded that she was actually in possession for four

four months after the change of Government; and then offered to prove that the office of Sur Patel was conferred upon Krishn Rao alone by the Juwarkur Raja, in 1655 or A. D. 1734. Admitting the relationship of the family to stand as stated by Appellant, she said the Peshwa himself selected Neelkunth Rao to be adopted by Krishn Rao and again chose Madhow Rao for the latter's adoption. He died in 1727, and Gunga Bace held the family Wuttuns from that time till 1737, and from that year till the end of Asvin 1739 of Salivahan (Summan Ashur) September 1817, Respondent and no other, held them, as she would prove by orders both from the late sole commissioner, and the Collector of Poona.

Respondent then handed up the original Grant of the Sur Patelkee by Vikrum Punt Raja of Juwar, to Krishnajee Muhadeo (Chaskur) making over to him in return for his fidelity and friendship for that state, a Huq of 3 Rookkas, or Pice, upon every bullock load paying Customs within the Muhals of Jael, up the Bhor Ghat, the Malsera Ghat, the Chonde Ghat, and the Muhals of Dehurje and Kulumbhe, to him and to his Heirs, to have and to enjoy for ever. The Deed bore no date.

An original Sunnud from Madhow Rao Bullal Peshwa, in Subbueen Miyat wu Uluf A. D. 1770, addressed to Oodesingh Raja of Wasda, confirming by this Deed all the Rights of the Sur Patelkee Wuttun conferred on or belonging to, Neelkunth Rao Ramchundur and the family of the Chaskurs by his Ancestor Raee Bhanjee for Wasda, and acknowledging the family's other Rights, under Grants from the different authorities, in the Districts of Peth, Ramnugur and Juwar, obtained by the Grandfather Krishn Rao.

An order from the same to Keshow Rao, Kumavisdar of Wasda to give Neelkunth Rao's Karkoon every assistance in realizing his Huq.

A Settlement by Respondent with the Custom Farmer for the Farm of the whole Wuttun, in Subba Ashur A. D. 1817.

Copy of a letter from Appellant to Respondent, dated Margsirsh 1739 or December 1817 proposing "that in consequence "of the late change of Government she should permit his name "to be entered on the Records as Sur Patel, because he was "on the spot, and more likely to get on with the business than "her, a Widow woman, but promising faithfully that she "should in reality enjoy the whole of the Produce of the Wut-"tun;" it concluded by saying that this plan would be better for both, as his own succession would then run less chance of being shaken or interfered with.

Respondent proved by several letters from the Defendant Balajee Punt Patunkur, that he was her Agent for the Sur Patelkee Wuttun up to September 1817.

A Farighkhut from Muthoora Baee, and a Deed of assignment to her of a certain annuity by Neelkunth Rao, out of the Revenues of certain villages, with a counterpart agreement from her, proved that she had separated herself entirely from him, and resigned her claims upon the family for the above consideration.

Her last exhibit was a letter from the Peshwa Balajee Bajee Rao under his privy seal, defining the rights of Krishn Rao Chaskur to be in three and a half out of the seven Turufs of the Jooneer Sooba.

Appellant gave in a letter from Muthoora Baee to him of the 2d Shravan Sood 1727, stating her intention of adopting him, and her having mentioned it to the Peshwa.

Another from Gunga Baee of 1st Ashad Sood 1729 informing him of her having constituted him Heir to the family Estate.

A letter (apparently an answer by Respondent to the above from Appellant) agreeing "that he should get the Sur Patel-

"kee

"kee entered in his name, and make arrangements for its ma-"nagement," and stating that the Respondent had written by the same opportunity to the Defendant Patunkur, to consider himself under Appellant's orders.

A letter from Respondent to Defendant Patunkur, of the 10th Phalgoon Sood in answer to his of the 5th (which had set forth a dispute with Appellant, who had claimed from him possession of the whole of the Wuttuns as his of right, and not fit to be under the management of a woman.) In this Respondent answered his letter by desiring him not to oppose Appellant, but to let him have his own way and give him copies of any papers he wanted as she would be soon in the Konkun, and would settle every thing.

Bugajee Oomajee, a witness called by both parties, deposed that he had been many years in Respondent's service, and had managed the Sur Patelkee for her from 1730 till 1732 inclusive, had received charge of the Sur Patelkee from Krishn Rao, and proved certain letters and accounts exhibited by Respondent relating to the continued possession of her family. Denied that the Sur Patelkee was ever held by Appellant, or that he, witness, had ever held it for him.

Sudaseo Keshow, the next witness, said he was put in charge of the Sur Patelkee by Gunga Baee, widow of Neelkunth Rao, in the year Sittu or A. D. 1806, and retained it till Summan A. D. 1808, when he gave it up to Bugajee Oomajee who had it from that time till Jhide Ashur A. D. 1811, on the part of Gunga Baee. Witness then got the office again and held it for part of Sullas Ashur A. D. 1813; did not know of Appellant's having had possession of the Wuttum during the years that witness was in charge for the family. Was not sure whether Respondent held it in Subba Ashur 1817 or Appellant. Heard that Appellant was a near relation of the Chaskur family.

Moro Dinkur Penthe, of Bhioondee, stated the descent of the

the family from Muhadajee Krishn, and their possession both in Inam, Dhurmadao &c. Respondent was representative of Krishn Rao Muhadeo. Balajee Mahadeo left four Sons. One, Purusram Bullal, whose Grandson, now alive, was named Purusyani Seevajee. The second, Moro Bullal, whose son, Balkrishn Moreshwur was alive. Meghushyam, the third, had Madhow Rao Meghushyam, the Appellant; and the Widow of his fourth son Umroot Rao Bullal, was still living. These four Brothers each got an equal share of the family possession in which Respondent had no share, whilst they again received or held no part of those possessions which fell to Respondent's branch of the family, up to 1739 or A. D. 1817 | 18, nor had they claimed it before the change of Government. Witness had neither heard of, nor seen any instance of Appellant's having possession, or management, of the Sur Patelkee.

Madhow Rao Anunt, a Karkoon under Purusram Bhikajee Kharkur, formerly Farmer of the Sur Patelkee along with the Custom Farm, said his master had held the farm of it from Respondent for five years, of which the first was Isne Ashur A. D. 1811 | 12. Khundkur held it for Sullas Ashur A. D. 1812 | 13, and then witness got it again, and held it from Arba till the end of Subba Ashur, or from A. D. 1813 | 14 till A. D. 1817 | 18, and finally gave up the farm in Asvin, Summan Ashur or September 1817, being four months after the Company's Government was established. Could not say whether Appellant had any thing to do with the Wuttun, but he as farmer settled only with Respondent. He exhibited a receipt he had taken from Defendant Patunkur in the name of Respondent on his giving up charge of the Sur Patelkee to him.

Gunesh Punt Sathe a dependant of the Chaskur family, had been in their service from 1708 till 1730. Knew that both Muthoora Baee and Gunga Baee gave Appellant the Deeds constituting him Heir to the family property, the one in 1727,

and

and the other in 1729. He could not recollect the exact dates, but both were drawn up by witness's assistance—He recognized them in Court, saying he had signed that by Muthoora Baee, and Gunga Baee signed her own. He said Madhow Rao Neelkunth was expelled his Cast and confined for the rest of his life, because he left Court at the Dussura and set up a Bund near Bheema Shunkur. Witness declared that Appellant performed Muthoora Baee's funeral ceremonies.

Moro Anunt Joshee Pawuskur said that Defendant Ballajee Punt Patunkur came on the part of Respondent in the month of Ashadh 1739 to manage the Sur Patelkee. Appellant's name was entered on the Collector's Books on the 22d December 1817.

The evidence being closed, The Court asked the Law Officers to state,

First.—In the case of a man who was in confinement and whose wife in the mean time enjoyed his Real and Personal Estates, and the man died in confinement without leaving a son, whether the Real property descended to the Widow or not?

Second.—If the Widow assigned away by a writing both Real and personal property to another, but enjoyed their Usufruct during her own life, whether would that Real and personal property go to the next Heir, being her daughter-in-law, or to the assignee? and had the mother-in-law power to assign away the property during her daughter-in-law's life, or not?

The Shastrees, quoting the passage in the Mitakshura so often referred to (Cole. Mit. page 224) Yagnyuwulkyu, "The wife, the "daughters, and their sons; parents, brethren, and their sons; "the Gotruju or Gentiles, and (Atma, Pitr, and Matr) "Bundhoo, or Cognates; a pupil, and a fellow student, "each in turn shall succeed in regular order upon failure "of the one above him, to the Estate of a man deceased "without male issue; this Rule applies to all persons and "classes."

" classes," observed, it is our opinion from this that after the death of her husband, leaving no son behind him, the wife becomes entitled to inherit his Estate, both Real and personal.

Secondly, In the Mitakshura, and other Books we find these words " They who are born, and they who are yet unbegot-" ten, and they who are still in the womb, require the means of " support; no gift or sale should therefore be made." (1) " With " the exception of a wife and son, that may be given, from " the giving of which no dispute of the family can arise. " The whole property may not be given when there is pos-" terity to provide for, nor what has been verbally promised to an-" other." (2) From these passages it appears that whilst the son's widow is alive, and has determined to keep up the family, by means of adoption of a son, the Mother-in law has no right to give away, to mortgage, or to sell, either the real or personal property composing the estate. She however has such Right over the personal property. Again " There is " no validity in acquisition, if possession, however slight, have " not been obtained by the acquirer." (3) From which we deduce, that even if the Father and Mother-in-law had given the estate in this instance to Appellant, it shall not be actually transferred to him, because no entry whatever has been made upon it on his part.

The Court felt no doubt in declaring, that the Sur Patelship had been conducted on behalf of Respondent for many years, and that up to the period of the territory being transferred to the Honorable Company, it was in the hands, and under controul of the Respondent; for at that period, or thereabouts,

(1) Mit. Book second, leaf 46th, page 2nd, line 10th, Cole. 257.

(2) Vide Note (1) to Bombay Cases No. 15.

(3) Mit. Book second, leaf 44th, page 2nd, line 7th.

abouts, the Defendant Balajee Krishn Patunkur was employed by her as Karkoon in the Sur Patelship. The Court did not consider that there was any thing against that person to warrant his being included in the Decree, and it was therefore adjudged, that the Right of Sur Patelship be vested in Respondent so long as she lived, and should then go to the Heirs at Law. Appellant was enjoined to allow Respondent to conduct the Sur Patelship, and to receive its profits unmolested, he paying not only Costs on both sides, but repaying to Defendant Patunkur whatever his Costs might be, since there was nothing against Patunkur to warrant his paying any part of the amount sued for.

Decree 4th April 1822.

Appellant pleaded now more distinctly that his claim to the Sur Patelkee rested principally on the fact of the family being still undivided, which was not to be supposed disproved by the Sur Patelkee Sunnud being in the name of Krishn Rao alone, for he had Sunnuds of an equally late date running in the joint names of the brothers.

Sudur Udalut, *Sitting Judge.* J. Romer, *Chief Judge.*

The Court considered the point upon which the dispute turned, to be whether Respondent, at the time when the districts in which these Zukat or transit duties were collected, were ceded to the Company by the Treaty of Poona of the 13th June 1817, was in actual possession of them and their profits, and was subsequently ousted by a clandestine act of the Appellant and another person by causing his, the Appellant's, name to be inserted upon the Collector's Books in place of the Respondent's. The evidence taken in the case clearly established the affirmative of the above proposition. There were no grounds for enquiring into Respondent's Title, which appeared to have been fully recognized by the former Government. As it was, therefore, proved that Respondent was in full possession of the Sur Patelship at the change of Government, and that the act by which she was dispossessed was clandestinely effected after the establishment of the British Government, and that her right to the same had been

Decree 14th Jan. 1823.

been recognized by the Government of the Peshwa, the lower Court's judgment was affirmed with Costs.

82.

KAOOSJEE MIHIRWANJEE, Guardian of DEENSHAH, Son of KHOORSHEDJEE, APPELLANT,

VERSUS

KHOORSHEDJEE NANA BHAEE..... RESPONDENT.

Surat Udalut, J. Kenfish. *Register.*

THIS was an Appeal preferred against a decision of the Surat Judge, in Appeal from the Register's Court. It appeared that Mihirwanjee Khoorshedjee sued Respondent to recover from him Rupees 300, the balance due to Appellant on a Bond and account of the year A. S. 1858, which, with Rupees 271 interest, made the debt amount to Rupees 608-2-75, and Rupees 308-2-75 having been realized by Appellant up to A. S. 1874, left the balance now sued for.

Principle laid down by the Sudur Udalut for calculating interest on actions of debt.

The Register found Rupees 176-3-72 of the Principal and Interest, still due, and decreed that Respondent should pay that sum to Appellant with Costs.

Decree 10th Feb. 1819.

Judge's Court in Appeal, G. W. Anderson, *Judge.*

The Judge examined the account of Interest, and found that out of the sum of Rupees 176-3-92, awarded to Appellant, only Rupees 27-2-4 could be called the balance of the Principal of the Note, which shewed that Interest far exceeding the Principal had been adjudged by the Register's Court.

As this was contrary to the Regulations, the Judge amended the decree, adjudging that Respondent (the Appellant in the Judge's Court,) should pay to Appellant the balance of the principal Rupees 27-2-4, and a sum as Interest equal to it, total Rupees 55-0-8, with Rupees 21-3-14 further interest from date of the Register's Decree, until the present day, and no more. Costs were given in proportion. The

Decree 10th May 1822.

Sudur Udalut, Special Appeal, *Sitting Judge*, J. Sutherland, *Second Judge*.

The Sitting Judge, taking the facts of case to stand as admitted by the lower Courts, proceeded to ascertain the point now in dispute, the loss of interest to Appellant from the manner in which it had been calculated in the Judge's Court. The Deputy Surishtedar was directed to calculate it on the principles of compound interest established by the Sudur Udalut, that of allowing interest to run upon every separate Item, both on the debit and credit side, from the date of receipt or payment of that Item, until the close of the account. In the account thus calculated according to the practice of the Court, the Respondent was debited Rupees 337-0-0 on the 5th Asvin Sood 1858, and (after allowing him 6 months' Grace by the Terms of the Bond) from the 5th Chytur Sood Sumvut 1859 or March 1803 interest was charged him at 12 per cent per annum, on the whole of that sum, up to 15th Magh Sood Sumvut 1875 or 10th February 1819, a sum of Rupees 629-2-0, leaving the sum total at his debit Rupees 966-2-0. On the credit side, various sums were entered between the 15th Asvin Vud 1858 and the 30th Magh Vud Sumvut 1874, amounting to Rupees 309-0-15, and interest upon them Rupees 483-1-75, total Rupees 792-2-90. The true balance against Respondent therefore, was Rupees 173-3-10 of which Rupees 27-2-85 was the balance of the Principal Loan, and Rupees 146-0-25 the balance interest up to date of the Register's Decree. The Sitting Judge therefore finding that Appellant was entitled to a larger sum on account of interest than had been allowed him by the Zilla Judge, referred the case for amendment to a full Court.

Competent Court, J. Romer, *Chief Judge*, R. Ironside, *Fourth Judge*.

Which accordingly awarded to Appellant the sum of Rupees 173-3-10 together with interest on that sum from the date of the Register's Decree up to the date of this Decree of the Sudur Udalut, at 12 per cent, Rupees 96-2-75, and all his Costs in the Sudur Udalut from Respondent.

Decree 13th Feb. 1822.

No. 83.

N°. 83.

NARO JUGGUNATH GUDHRE, on the part of KOONTE, Khot of Luvel..... } APPELLANT,

VERSUS

*MADHOW RAO HUEBUT RAO Sinde....*RESPONDENT.

South Konkun Udalut, V. Hale, *Judge.*

Suit by Appellant for the village of Luvel in the Soovurndroog Talooka.

Dismissed by the Zilla Court on Respondent's exhibiting the oldest document; by the Sudur Udalut, on his having the latest possession of the village.

APPELLANT sued Respondent on the 4th January 1822, in the South Konkun Udalut, to recover from him the village of Luvel in the Turuf of Kher and Talooka of Soovurndroog, belonging to the family of Koonte, from whom Appellant's father and himself had long held it, but were dispossessed by Respondent during the Peshwa's Government in Arba Ashur A. D. 1814; they once regained it by a reference to the Peshwa, and held it until Respondent again took possession under the Company's Government, for which act the Appellant and his master sought redress by the present action.

Respondent declared the Village to belong of right to himself, descending in uninterrupted possession from his ancestors until A. S. 1706 or A. D. 1785, when Appellant, through his influence with Furke Mcamlutdar of the District, dispossessed him. In Khumsu or A. D. 1805, a decision was passed by the Peshwa's Government under which Respondent regained possession and had kept it ever since.

Both Appellant and Respondent exhibited a great many documents. Among others exhibited by Appellant was one, probably from the Peshwa, addressed to the Villagers and dated 25th Rumzan Summan Khumsueen Miyat wu Uluf A. D. 1758, resuming the Khotship, from Jaojee Rao Khanwilkur, to whom it had been given, and granting it to the Sinde family as their's of old.

The Zilla Judge found that the decrees in this case during the native Government had been so numerous, and reversed so often,

often, that it was necessary to set them aside as unworthy of credit. There were no less than four decisions by the same person Sudaseo Mankeshwur, Soobedar of the Province. The Court had no other means of pronouncing an equitable decision but by awarding the Village to that party which proved to have the most ancient right to it. The Sunnud of Summan Khumsueen exhibited by Respondent proved his right to be the most ancient, and in consequence Appellant's suit was dismissed with Costs.

Decree 7th May 1822.

Sudur Udalut, Sittings at Ratnagiree before T. Barnard, *Fourth Judge.*

The Court held that the principle on which the Zilla Judge had decided, was evidently a mistaken one, for however inconsistent the Peshwa's authority might have been it was competent; and the last decision was the binding one. All the latter Sunnuds however were from various inferior officers, whose Decisions, though they were frequently issued for immediate purposes, could scarcely be considered final, as those officers had whenever they chose reversed each other's Decisions. The Soobedar was the only officer of sufficient rank to be considered competent according to the usual mode of Mahratta litigation, and his orders were liable to the same objection, of not appearing to consider any decision to be lasting. There was not among all the Papers any direct Grant from the Peshwa; each party possessed many Sunnuds but none of them had proofs of authenticity. The evidence proved that each party had at various times possessed the office. The Court had therefore no Grounds for a decision, and no resource but to leave the cause of dispute as it existed when brought into litigation, which agreeing with the Zilla Judge's Decree, it was affirmed with Costs against Appellant.

Decree 9th Dec. 1822.

No. 84.

N°. 84.

BHAEECHUND BHIKAREE.....*APPELLANT*,

VERSUS

PRUMANUND MADHOW, and nine others of the Guleeara or Indigo Maker's Jumaut..... } *RESPONDENTS.*

Broach Udalut, Robert Boyd, Act. Register.

ON the 4th May 1821, Appellant filed a Suit against Respondents to recover Rupees 150, as damages for expulsion from Cast, and to obtain readmission to it. He said that about three months ago Respondents were sent for to the funeral of Wujeh-ram Gopal of Unkuleshwur, (Occleseer,) by Krishnee Baee, his Widow, who after the funeral desired them to carry an invitation for the 12th and 13th day's Feasts from her to the Cast at Broach. Toolsa Hurchund was employed by them for the purpose of inviting the Cast, but he omitted Appellant purposely, as he told Appellant, by orders of the Jumaut, mentioning particularly the names of Respondents as the persons from whom he had this order.

Suit by Appellant for damages for expulsion from the Jumaut occasioned by Appellant breaking through a Set of Bye Laws regulating the Trade.

Dismissed by the Zilla Judge (reversing a Decree of the Register's Court in Appellant's favor) and his decree affirmed by the Sudur Udalut.

Respondents answered, that at a full meeting of the Jumaut one night in the month of Margsirsh Vud last, at the house of Jugjeevun Nuthoo it was observed that Appellant was absent, and when sent for, first omitted to attend, and afterwards appearing among them, said he would neither join them in mourning nor marriage, nor in any thing else, nor permit them to attend him on those occasions at his own house. Since he had renounced his Cast, it was useless for them to continue to summon him, and he had remained out of Cast ever since.

The Acting Register observed that Respondents having admitted the fact of putting Appellant out of Cast, nothing remained but to decree that the Cast should readmit him among them, which was done and each party ordered to pay their own Costs.

Decree 6th July 1821.

Respondents

Respondents in appealing against this decision represented that Appellant's reason for setting the Cast at defiance and separating from them was dislike to certain articles of a Bundobust, or Set of Bye Laws drawn up by the Jumaut for the Regulation of their Trade, and which were under discussion on the night that Appellant renounced his Cast. That this Bundobust was registered at the Udalut, and was not obnoxious to any one, and therefore they prayed that as Appellant had renounced them without reason, they might not be obliged to receive him again among them.

Judge's Court in Appeal, T. Barnard, *Judge*

Though not mentioned in the Register's Proceedings, it appeared that his decision was given against the Cast under precedent of a Decree of the former Acting Register, Mr. Vibart, dated 24th December 1819, upon a Suit by the Cast against Appellant to recover from him damages for breach of the Bundobust, in which it was decided that Appellant should carry on the Indigo Manufacture with the rest as usual, and they should readmit him to the privileges from which they had expelled him.

Respondents asserted that Appellant had been in the full exercise of his Cast rights from the date of this Decree until he of his own accord again separated himself from the Cast. The Court held that this was a distinct cause of denying him admission and such as might be tried on its own merits, and the suit was referred to the Register for that purpose.

Interlocutory Decree 24th August 1821.

The Appellant, was under this Precept called on for proof of his statement.

Register's Court, Robert Boyd, *Register*.

Two witnesses deposed that all the members of the Jumaut were invited by Respondents to the feast in honor of Wujehram Gopal at Unkuleshwur, but that Appellant was omitted in the invitations. One of them said that Appellant was turned out of Cast for refusing to abide by the Terms of the Bundobust.

Two witnesses called by Respondents admitted that Appellant

pellant was turned out of Cast because he would not carry on business with them, and continued to trade by himself. One of them was present at the meeting when Appellant refused to abide by the terms of the Bundobust.

The Bundobust was then produced and was as follows.

" 9th Margsirsh Sood A. S. 1868 or A. D. 1812.

" The whole Punchayut of the Broach Guliyara, Dyers " and Indigo makers, have unanimously agreed upon the " following points.

" That they will charge a Rupee for the dying of every " 8 seers' weight of Cotton thread for sarees, or women's " Clothes; ten anas for every Saree; four anas for every blue " Saree; six anas for printed Calicos; five Rupees per score " for Chuyuls, or spotted Sarees; three Rupees per score for " Bohura women's Sarees; two and half for Bohura Saree " Chuyuls. The whole Punchayut shall divide among them " the fine cloths sent to be dyed. The person who departs " from these Rules is amenable to the Punchayut; no one " shall privately dye either Cotton thread, or cloth ready " made. This writing is to be observed like our Religion, " and the words of our fathers. We take to witness the God " Hunooman, and Sooltan Yar Ghazee (whose Fukeea is " near that Temple) that we have passed and signed this " agreement; whoever departs from it shall pay Rupees 50 " as a fine to Government."

This paper was signed by 15 persons and by Appellant as the sixth among them. The Acting Register decreed that Respondents should still readmit Appellant among them, because it was proved they had lately expelled Appellant from Cast, since it was incumbent on them to sue Appellant, if he would not abide by his agreement, seeing that expulsion from Cast was not therein stipulated as the Penalty for a Breach of it.

Decree 12th April 1822.

When

Judge's Court, J. Kentish, Judge.

When these proceedings, held under the Interlocutory Decree were recorded, the Judge required of the Hindoo Law Officers to state, whether an agreement, drawn up like the one now shewn them by a body of men for the Regulation of their business, was binding upon one member of the body if he dissented from it, or refused to abide by it?

They answered, any Body of men can make such a Bundobust or bye Law, or agreement, among themselves, without the consent, or against the will, of one member, and that one member cannot break it, whether he have previously agreed to it or not, and they have the power of fining a person for breach of its Terms as provided for in it. If they are obliged to apply to the Prince, he should affirm the Bundobust, and fine any one who breaks it: for it is thus written in the Sumvidhvyutikrumu Prukurn, or "Chapter on opposing the acts of a Body," "Let the Prince confiscate all that man's Estate, "and put him out of his dominions, who seizes upon the "Joint Stock of a community, or acts contrary to the Rules es- "tablished by them, or by the Prince." And again, "He "who opposes the aforesaid Rules, shall receive the punish- "ment of Pruthum Sahus" (the first, or lowest, scale of crime. (1)

Appellant being asked whether he had signed the Bundobust, admitted that he had done so, but that it was drawn up in consequence of a stranger from Surat wishing to set up trade to the prejudice of the Cast.

On reference to the Records, it appeared that the Respondents filed an information on the Criminal side against Appellant for Rupees 50, as penalty forfeited by him by breach of the Bundobust, which was dismissed, and Respondents referred to the Civil Court.

It further appeared that a Moochulka was signed by Appellant,

(1) Mit. Book second, leaf 72d, page 2d, line 7th and 14th.

pellant, and four of the Respondents, on the 22d June 1818, binding themselves to receive all goods sent to be dyed, without dispute, under penalty of Rupees 25, on refusal or obstruction, to be paid to Government.

The Court was satisfied therefore that the reason given by Appellant for signing the Bundobust, was wholly irrelevant, for this fact of his having given Security against an adherence to its Terms, clearly indicated that Appellant was a party to its execution, and fully exonerated the Cast from all responsibility for a measure proved to have been concerted with the knowledge and acquiescence of Appellant. The Cast must be presumed to be the best Judges of their own interests, and as this combination excluded no individual from participating and sharing in common the mutual benefit, profit, or loss, experienced by the collective body, the Court was of opinion that the act of the Majority, grounded upon equality of right and privilege, and contested solely by one dissenting Member of the Punchayut, ought not to be interfered with, unless some specific proof of the existence of oppression or other exercise of arbitrary power were distinctly set forth. In the present instance, the Cast had merely exerted a right common to all classes, that of adopting a system of procedure in their opinion most likely to benefit the general Body, and to which they invited the whole of its members, without any reservation or exception. It would from hence follow that no blame could attach to the Cast relative to the execution of the Bundobust—The only question remaining to be disposed of, was whether their line of conduct in enforcing expulsion in the present instance, was justifiable by Law; in other Terms, whether any offence cognizable by the Punchayut had been committed justifying the severity of the Punishment. The Law Officers had declared the acts of the whole Cast conclusive and binding on Appellant, on the ground of his being the only dissenting member. The only control which could be exercised over Casts by a Court of Justice was the awarding damages to the Party injured or oppressed, but it would be manifestly

nifestly both impolitic and unjust to interfere on every occasion, more especially in a case of mere controversy of opinion. Although a general superintendence is vested in the Courts for the due preservation and protection of the rights and privileges of every part of the community, yet still it was far from desirable that every refractory member of a Punchayut should at will make the Udalut the Arbitrary instrument of forcing a large body of men into his own views and interests. For these reasons the present action was dismissed as not tenable on the plea of either Equity, Justice, or Policy, and the Register's Decree was reversed, the Cast and Appellant being left at liberty to carry on the trade in any way they might think most conducive to their several interests.

Decree 27th June 1822.

The Sitting Judge was of opinion that although Appellant was bound to a certain extent to abide by an agreement which he voluntarily entered into, yet that the punishment inflicted by the Cast and upheld by the Zilla Judge was a most cruel and severe one, considering the offence, which if any punishment be deemed necessary for the trial of a compact entered into by the Cast, both injurious to the public, in defiance of the orders of the Magistrate, and in open opposition to a Moochulka passed to Government by the whole body of Dyers, ought to be punished as provided for in the agreement itself, which laid down that any infringement of its ordinances was to be punished by a fine of Rupees 50 to Government. Under this view the Sitting Judge submitted the case to a full Court, satisfied that however politic it generally might be to refrain as much as possible from interference with Casts in matters of their own, and in relation to particular members of their body, the present Court could never for a moment permit that a trifling and unimportant deviation from an unjust and illegal combination, should be visited by the infliction of a punishment the most severe save death itself, that could possibly be imagined by the natives of this country.

Sudur Udalut, (Special Appeal,) *Sitting Judge.* E. Ironside, *Third Judge.*

The Court however seeing no just grounds for interfering with the

Competent Court.

J. Romer, *Chief Judge.* J. Sutherland, *Second Judge.* Decree 27th Feb. 1823.

the decision of the Zilla Judge of Broach, affirmed his decision against Appellant with all Costs. (1)

N° 85.

WULUBHRAM OOMAYUSHUNKUR .... APPELLANT,

VERSUS

His Wife BIJLEE, ... RESPONDENT.

Surat Udalut, J. Vibart, *Register.* Oonewal Brahmuns.

RESPONDENT sued under date the 12th December 1821, in the Surat Court, to recover from Appellant, her husband, Rupees 400, on account of her Pulla Jewels, and Rupees 125 a year's maintenance due.

She stated in her plaint, that when she was married to Appellant, her Parents gave her Jewels to the value of Rupees 300, for Pulla, and Rupees 100 as "Reet Bhat" or customary present—Appellant took this property, and made up for her five new ornaments, which she specified. About a month after, Appellant took them off her person, and turned her out of the house, and she now felt obliged to sue him for them, or their value, and to obtain a maintenance from him.

Claim by a Wife against her husband, for a maintenance and recovery of her Dower Jewels taken from her by him. Decreed as sued for in both Courts.

Appellant declared that he never took any ornaments from Respondent's person, and that she had no just claim against him for a maintenance. She had attained the age of 20 before she even entered his house, and her conduct was bad, and notorious to the whole City—It was about a year ago that she came to him of her own accord without any ornaments; on his asking her why she now came when he had so often sent for her in vain, she said she was coming to stay with him and promised fairly, and he gave her some ornaments to wear, to keep up an appearance of respectability with his neighbours—He would prove that one day

(1) The Manufacturing Companies, or Jumauts, are generally composed of members of various Casts, and are termed Poogu, in Hindoo Law. A member turned out from such a Company still retains the privileges of his own Cast unimpaired; but the Gooliyarus of Broach are said to be of the Chheepa Cast.

day she went with Sukharam Morojee, her paramour, through the streets wearing all the ornaments he had given her, and that she returned with her mother in the evening without them. She ran away that same night, and had not been in his house since that time—He pleaded that by the Shastr, a woman who separated from her husband without his consent was not entitled to maintenance, and that she was not by the same Law entitled to hold her Pulla.

Respondent totally denied the whole of this charge and retorted upon Appellant equally disgraceful conduct.

On the part of Respondent two witnesses distinctly deposed that Appellant after a long dispute in their presence demanded of Respondent the ornaments she had on; that she said they were her Pulla, and her own property and she would not surrender them; that Appellant then with his own hands took them from her person. A third said that he was sent by Respondent to demand the Jewels from Appellant, who said he had as much right to them as she had, and refused to give them back. A fourth said Appellant asked him to carry a message to Respondent to take these ornaments, and file a Razeenama.

Behchur, a Goldsmith, said that about two years since, Appellant brought some ornaments and asked him to make them up anew, fit for his wife to wear, and that he made up five ornaments corresponding in name and value with these stated in the petition.

Deoshunkur, a witness called by Appellant, said he remembered Respondent coming home to Appellant's house about two years ago, and on being asked by him where her ornaments were, she said her mother had made a vow not to let her have them till she had borne two children. He had once afterwards seen her in the street with ornaments on, and mentioned it the same day to her husband, and was also witness to her returning to him at night without any.

Another

Another said he saw a crowd one day round Appellant's house, and Respondent's mother said her daughter had run away.

Another said Sukharam had told him that Respondent's Mother and Brother had made away with most of the ornaments, and he could not restore them, but all the rest he would with the exception of one; that Appellant then wanted a promise in writing that Respondent should not leave the place, but Sukharam would not give it.

Another person said this offer was made by Respondent's Brother, not by Sukharam. Both of them said they had sometimes seen Respondent come out of Sukharam's stable, and that Sukharam had made an offer to Appellant of Rupees 200 and a maintenance for Respondent, but he said he was not a pandar to his wife, and would have nothing to say to him.

Another said that in the month of Kartik of the last year he had met Respondent in the town with her ornaments on, and asked her where she was going, and that in the Evening he saw her return without them and heard the dispute between her and Appellant.

Another witness spoke to Sukharam's having in his presence admitted that Respondent's Mother and brother had made away with almost all the ornaments and promised that she should return with such ornaments as she still retained.

Three other persons spoke to their having seen Respondent going out with her ornaments on, and returning in the Evening without them.

The Appellant was examined respecting the way in which he had obtained the new ornaments which he had given to Respondent. He said they were given to him by his Aunt with the exception of a pair of Anklets which he bought of one Bhugwan. This person positively denied having sold any thing of the kind to him.

The

The Court conceived that Respondent had proved her case, whilst Appellant had failed to substantiate the assertions made in his pleadings, viz. that Respondent came to his house without any ornaments and that he gave her new ones, whether purchased, or received from his Aunt, and his own witnesses did not agree with his statement.

It was therefore decreed that Appellant should either restore the Jewels to Respondent, or pay her their value, Rupees 400, with her maintenance as sued for, and Costs of Suit. Decree 30th April 1822.

The Court considered that the evidence of the only two witnesses who had deposed to the Chief point at issue in this cause, the forcible taking of the ornaments from Respondent's person by Appellant, was neither very clear nor satisfactory upon it; one of them was since dead, but the survivor was called into Court and underwent an examination, from which the Court found that Respondent, though unwilling to give up her ornaments, was not subject to any personal violence in having them taken from her person, this act being partly her husband's and partly her own, for she said "they are my 'Pulla, but if you will take them, you may," and stretching out her feet, let him take off the Anklets, taking the ornaments from her neck with her own hands at the same time. The Court concurring with the Register that Appellant had failed to substantiate the defence he had set up, affirmed the Decree in Respondent's favor with Costs. Sudur Udalut, *Sitting Judge.* J Romer, *Chief Judge.* Decree 18th Feb. 1823.

N°. 86.

RAMAJEE HUREE BHIDE*.....*APPELLANT,

VERSUS

THUKOO BAEE BHIDE*.....*RESPONDENT.

ON the 28th April 1821, Appellant filed his suit against Respondent, in the amount of Rupees 7,000, value, at the rate North Konkun Udalut, E. H. Baillie, *Judge.*

rate of ten years' profits, of the Inam Village of, Rahatowree, Turuf Chon, Prant Kulyan. He said that he was adopted about 5 months ago by Ruma Baee Bhide, and thereby became entitled to this Village, but Respondent, who had possessed herself of it, and of all the rest of the Family property, refused to surrender it to him, the lawful proprietor under the laws of the Shastr on adoption. He was too poor to sue by the regular routine of a Petition on stamped paper of a value proportioned to the amount claimed, and prayed to be permitted to sue in formâ pauperis. His adoptive Mother he said was too poor to assist him, as she had only Rupees 15 per month allowed her by Respondent, but he would pay up the Government dues when he came into possession of his rights, which he prayed the Court to consider and pass a decision upon in his favor.

Claim by Appellant, as the adopted son of the Widow of Respondent's adopted son, for an Inam village descending from Respondent's late Husband. Half the village decreed under Vyuvusthas declaring Respondent's right to keep the other half during her own life, as widow of the late proprietor dying without male issue.

The Court after the usual enquiry admitted Appellant to sue as a Pauper.

Respondent in answer to the Petition pleaded that she had held the Family Estate, with the village, for forty years without any one pretending to be Heir to it, until this claim was preferred by Appellant, of whom she denied all knowledge, as well as of any right possessed by him.

Appellant replied, that his Father (by adoption) Huree Ramchundur Bhide formerly held the village, and his adoptive mother Ruma Baee afterwards had it for five years. His adoption was performed at Kulyan with the usual ceremonies, by Ruma Baee in presence of the Brahmuns, Zumeendars, &c. Respondent also knew very well who he was, as Ruma Baee had represented both to the Zilla and Appeal Courts, that she intended to adopt him, the son of Untajee Punt Bhide, and Respondent had not opposed it, though at the very time litigating in those Courts with Ruma Baee. He, as legally constituted male representative of the family, was alone entitled to hold this Inam, but expressed himself willing to allow her a maintenance. He asserted that Respondent's only rea-

son

son for resisting him, was that she might make it over to her own daughter's son.

Respondent observed upon Appellant's plea of adoption, that she herself had formerly after the death of her husband sent for Huree, the son of her Maternal Uncle, Sudaseo Bhut Vueshumpayun and both adopted him, and celebrated his Marriage, the only Sunskar or act of regeneration still unperformed by his own father. But the Zumeendar refused to accept the Sur Pao on the occasion in ratification of the adoption as it was contrary to the Peshwa's Regulations, and to the Shastr, and custom of the country, to adopt a son without permission of the Government. This was about 20 years ago, and the boy soon after died. His Widow, Ruma Baee, lived with Respondent from that time until Isne and Sullas A. D. 1803 | 4, when she was found to be acting very wrong, and was turned out of the Cast, and remained excommunicated until Ashur, A. D. 1810. The person suspected as her paramour, then paid the Government fine, and underwent penance in the Cast; Ruma Baee through the assistance of Vyunkut Bhut Tuelung prevailed on the Moamlutdar in Subba Ashur to put her in possession of part of the Village, and the next year when Respondent was at Waee, got possession from the Collector and held it for four and a half months, being the two last in Subba, and two and half in Summan Ashur, or April, May, June, July, and part of August 1818, when she returned and was reinstated in the Village. She then sued Ruma Baee, and the suit was carried to the Court of Appeal, which reversed, in Respondent's favor, the Zilla Decree which had been given against her. Appellant's adoption was invalid as performed without consent either of Government, or of herself; and she never would recognize him as legal Heir to the Estate—As long as she lived she alone was Proprietor, and after her death her Grandson would succeed. Appellant had no right or title to oust him, and she prayed the Court to set his claim at rest.

Her first exhibit was the Decree of the Court of Appeal, and

and the case itself being intimately connected with the present, is here given at length.

THUKOO BAEE BHIDE.....*APPELLANT*,

VERSUS

RUMA BAEE BHIDE.....*RESPONDENT*.

North Konkun Udalut. S. Babington, *Judge*.

Suit by Appellant against Respondent her daughter-in-law for recovery of half the produce of a village, the property of Appellant taken and appropriated by Respondent.

Disputed on plea of right to possess half the village.

Respondent's right admitted by the Zilla Court but disallowed by the Court of Appeal, which decreed restoration of the produce sued for.

THUKOO Baee sued Ruma Baee in the Zilla Court to recover from her Rupees 679-2-0, amount surreptitiously obtained from Thukoo Baee's Inam village of Rahatouree. (She gave the same account of the dispute as in her Rejoinder in the present case). Ruma Baee urged that what she had received from the village was in virtue of her clear right to one half of the Inam village, and that Thukoo's charge against her of bad behaviour and expulsion from Cast, was framed with a view to destroy this right.

Thukoo denied that Ruma had any right whatever to half the village, which belonged to herself by the Hindoo Law, and she prayed that Ruma might be prevented from adopting a son as she threatened, since Ruma had no right to do so during her life.

Several witnesses were called by Thukoo, one of them the Patel, and all agreed in stating that Dinkur Punt came as Agent for Ruma with Vyunkut Bhut last year with an order from the Collector for removal of the attachment in favor of Ruma, and that they paid half of their dues to Ruma, who was Thukoo's daughter-in law, but had never before had any thing to do with the village or its Revenue, which belonged to Thukoo and to no one else.

Thukoo Baee closed her case with the observation, that as Ruma was out of Cast, and had never consummated her marriage, she could claim nothing as due to her in consequence of her husband's adoption.

Ruma

Ruma had no witnesses, but exhibited Copy of a Memorandum said to have been addressed by Unna Dhumdera (Uncle to the Peshwa's Wife) to Wittul Punt Bhide (said to have held the Moamlut of Raj Machee) being a Deed of Division executed in Subba Ashur, A. D. 1817, between the parties, of the Produce of the Village in equal shares, together with every thing else belonging to them. The Deed was signed by Dadajee, Koolkurnee of Turuf Chon, on the part of Ruma Baee, as agreeing to its provisions, but a similar written consent on the part of Thukoo was not to be found annexed to the Deed.

An order from Raj Machee to the Village for delivering it, in conformity with the memorandum, in equal shares to the parties, and for the surrender of the Revenue still uncollected to Ruma, as Thukoo had realized her share.

A Copy of a letter from the Sur Soobedar, Pandoorung Ramchundur Deodhur (Unna Dhumdera) to the Raj Machee Soobedar alluding to the memorandum.

The Court remarked that this letter needed to be proved.

The Hindoo Law Officer was desired to state, in the case of a Widow, who having only a daughter, adopted a son, who died without leaving issue by his Wife, whether she, the daughter-in-law, had any claim during the life of her Mother-in-law upon the Property, and if she had, to what proportion of the whole? Second, If not during the life of her mother-in-law, whether she would succeed after the latter's demise.

He answered upon the first question, that the daughter-in-law would receive half of the whole property; (1) on the second, that she would have no claim to the Mother-in-law's remaining half, so long as the latter remained alive; but after her death, she would be entitled to it all, with the exception of the Mother-in-law's

(1) This doctrine is set aside by the Shastrees of the Court of Appeal.

in-law's Stree Dhun, or the private and sole property of a Hindoo woman, which must go to her own daughter (2).

The Court held that Thukoo had offered no proof of Ruma being excluded, by loss of Cast, from the rights which she would otherwise possess. And according to the exposition by the Pundit, of the Hindoo Law, it appeared that the widow of an adopted son circumstanced like Ruma Baee was entitled to half of the family property; as far therefore as she had gone, Ruma had assumed no more than was her right, and Thukoo's demand being declared unfounded. it was dismissed with Costs.

Decree 9th Dec. 1818.

Court of Appeal, J. Elphinston, *Chief Judge.* J. Romer, *Second Judge.*

Thukoo Baee rested her claim to reversal of this judgment on its being contrary to the Shastr, and begged the Court to consult their Shastrees on the point. They were accordingly desired by the Court, to state, which of the three, the Widow of the Inamdar, their daughter, or the Widow of the adopted son, ought to be considered Heir of the Inamdar, and entitled to succeed to the Inam Village?

They answered, when the Inamdar, who was a Brahmun, died, his widow became the Heir to his property; she did not lose this right in consequence of the adoption of a son, because that son died first without male issue; wherefore she, the original Proprietor's widow, who adopted that son, is still the Heir to the whole property, from this passage in the Mitakshura (quoted in Case No. 81, and elsewhere), "The wife and the "daughters also" &c. And from the same passage, and from the Muyookh, it is our opinion that after the widow Thukoo dies, Ruma, widow of her adopted son, must succeed, (3) and after her death the daughter of Thukoo will inherit, or her son, if she be not in existence. As long as the widow Thukoo and her daughter-in-law Ruma are both alive, the latter should live under

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(2) Mit. Book second, leaf 61st, page 2d, line 3d, Goutumu, "a woman's property goes "to her daughters, unmarried or unprovided for," Cole. Mit. 369.

(3) The word "Wife" applying to a son's Wife also.

under the control of her Mother-in-law (4) but if they cannot both agree, the Mother-in-law must give to the daughter-in-law a house to live in, with a proper allowance for food and raiment.

The Court under this exposition of the law, reversed the Decree of the Zilla Judge, and decreed, that the proprietary right to the Inam village of Rahatouree vested in Thukoo Baee Bhide, and that the whole of the receipts in grain or Cash by Ruma Baee should be returned to Thukoo, who was thereby declared liable for a maintenance to Ruma suitable to her own means. Costs in both Courts were given against Ruma.

Decree 13th July 1819.

Respondent's next exhibit was an order, dated 17th January 1821 from the First Assistant Collector to the Kumavisdar, desiring him to warn Ruma Baee "that if she had adopted a son "it was without orders of Government, and he would not be "acknowledged as such by its authorities," and directing him to send them both, with all parties concerned, to the Kucheree.

Appellant gave in a memorandum of the names of the persons present at his adoption, with another of those present at a meeting held at Poona on the 12th Jesht Vud 1742, or 7th June 1820, whereat it was determined that Ruma Baee, the daughter-in law, ought to adopt a Son, as the mother-in-law, Respondent, had no male issue.

Fureedood Deen Moohummud, Chowdree of Kulyan, said he was sitting one day with one Anund Rao when the Appellant's adoption was talked of. Witness asked if Government's sanction had been obtained, and he left that place on being told it had not. Witness considered such sanction necessary.

Dhond Bhut proved performance of Appellant's adoption with all ceremonies required by the Shastr. Conceived that Appellant succeeded in virtue thereof to all the rights of Huree Punt

(4) Vide Case No. 188.

Punt Bhide, and that the power of adoption properly devolved upon the daughter-in-law.

His Son Mulhar Bhut deposed to the same effect. Pandojee Ram, Patel of Kulyan, proved the adoption.

The Court asked the Shastrees, whether Appellant was legal Heir to Respondent or no? and if he were, what share of the property would fall to him?

They replied by a quotation from the Duttuk Durpun, (or Mirror of adoption.) "These are the words of Vusishtu, A "man without a son must make every endeavor to obtain a re- "presentative of a son, for the purpose of performing the Pind "and Oodduk funeral ceremonies for him. A person being "about to adopt a son, should take an unremote kinsman "or the near relation of a kinsman, having convened "his kindred and announced his intention to the king, and "having offered a burnt offering with the Vyarhiti prayers in "the middle of his dwelling." (5) Again, "A husband's "commands to adopt are required for a married woman, but "for a Widow to adopt without such command, the permis- "sion of her Father, or if he be not alive, then of the Cast, "(Nyati) must be obtained." (6) And Yagnyuwulkyu says "Let a female be taken care of by her father whilst a child; "by her husband when married, and by her son in her old "age. If she have none, let her Gentile relations or the Cast "(Nyati) take care of her, for a woman is not at any time "independent." (7) Katyayunu also says, "A married "woman"

(5) Cole. Dig. vol. 3d, page 242. Duttuk. Mimansa. page 93.

(6) Vide Note (7) to Bombay Cases No. 43. The word Nyati signifies kindred, and those only the Sapinda or Gentile kindred. Whether Nyati is in this sense applicable both to her father's and husband's families (as may be inferred from the passage quoted in Note (12) to Bombay Case No. 43.) it is not required to shew.--The question is, whether the word Nyati should be translated, Cast, or Gentile relations, and will be best decided by a future reference to the Sudur Udalut Shastrees—The distinction is important, as will be seen on reference to No. 43 of the Bombay Cases, Vol. 1st page 193.—Mr. Colebrooke considers the author of the Muyookh to mean by this term "*Gentile relations*," Cole. Mit. 208, but the Shastrees have chosen to construe it *Cast*.

(7) Mit. Book first, leaf 12th, page 1st, line 4th.

" woman" (Naree) " certainly must not act without orders," which we conceive to mean, those of a father, husband, and son. (8) However, a Widow has the power of adopting even without the orders of her husband. A Widow destitute of all three legal protectors, is mistress in her own right of the power both of giving and receiving. It is further said the " lawfully begotten son of one person may be called well " and truly adopted, or received as one of the other ten sons, " by another, when his Sunskar or initiatory Rites have been " performed in the name of the new father's Gotru, or Pater- " nal blood relations." (9) From this it seems that the Appellant obtains the rank of a son. · Again (the Muyookhu has it) " A Widow woman, even if chaste, and if partition " have taken place, is not fit to take Real property." (10) " Whatever may be the property, whether acquired by mort- " gage or any other means, of a person separate from his Fa- " mily, with the exception of Immoveables, his Widow shall " receive." " A Husband being dead, his Widow shall re- " ceive his" (already separated) " share." From these passages it is clear, that a Widow has no Title in her own right to inherit Real property. Yagnyuwulkyu says, " The ownership " of father and son is the same in land, which was acquired " by the grandfather, or in a corrody, or in Chattels which " belonged to him" (11); and, " In such wealth which the " Grandfather has aquired, both real and personal, it is de- " clared that the share of the father and of the son is exactly " equal." " Separated Kinsmen, as those who are unsepa- " rated, are equal in respect of immovables; for one has not " power over the whole, to make a gift, sale, or mortgage." (12) " The father is master of the gems, pearls, and corals, " and

(8) Who are especially named in the very same verse of Katyayunu quoted in the Muyookh. See Note (7) to Bombay Case No. 43. The quotation is partial.

(9) Kalika Poorana, quoted in the Chapter on Adoption in the Muyookh.

(10) The Muyookhu only quotes it to set it aside. Vide Note to Bombay Cases No. 18.

(11) Mit. Book second, leaf 50th, page 1st, line 7th, Cole. 278.

(12) Mit. Book second, leaf 46th, page 2d, line 14th, where, however, it is expressly declared

" and of all other moveable property, but neither the father " nor the grandfather is lord of the whole immoveable Estate." (13) By these passages an equal share of property descending from the paternal Grandfather is assigned to the father and son. Again it is written, " a given son must never claim the family " and Estate of his natural father." (14) " Not brothers, " nor parents, but sons, are heirs to the Estate of the father." (15). " Sons, principal and secondary, take the heritage, as " has been shewn. The order of succession among all tribes " and classes on failure of them is next declared." (Cole. 324.) From all which we find, that the Right of the son is first. Bruhusputi says " and a father's wife, being without male issue, has " been declared partaker of an equal share, and so are the " wives of a Grandfather, for they all are the same as a Mo- " ther." (16)—In the present case, the son whom the daughter-in-law adopted will be the Heir of his Grandmother, (by adoption) Respondent, for at the time of his adoption she did not either by her own mouth, or by message say, " I forbid you to adopt a son;" wherefore it seems that her consent was given to the act, and for this reason the adopted son, Appellant, is Heir both to the moveable and immoveable property. Respondent will receive a half share of the Estate, but even of this half the management of the Real property, as regards Gift, mortgage, or sale, must be conducted with the consent of the adopted son, Appellant, who, after the death of his Grandmother, Respondent, will inherit her share.

The Court taking notice of the decision of the late Court of Appeal

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clared that " among separated kindred the consent of all tends to the facility of the transac- " tion, by obviating any future doubt whether they be separate or united; for it is not re- " quired on account of any want of sufficient power in the single owner, and the transaction " is consequently valid, even without the consent of separated kinsmen." Cole. 257.

(13) Mit. in the 11th line of the 1st page of the same leaf. Cole. 254.

(14) Vide the same passage in No. 14.

(15) Munoo, Ch. 9th, Verse 185. Cole. Mit. 318–19.

(16) The Muyookhu, which attributes this verse to Vyasu, quotes it in proof of a Step-mother's and Grandmother's right to share.

Appeal in favor of Respondent, against Ruma Baee, and of the above opinion of the Law Officers, dismissed the Appellant's claim with full Costs, adjudged against him if property ever should be found.

The Sitting Judge thought there was an objection " in limine" urged by Respondent to proceeding in this Suit under its present form, seeing that Appellant had not yet appeared personally in the Sudur Udalut, though Respondent had been called upon in the first instance to shew cause why Appellant should not be permitted to Appeal in formâ pauperis, and he had been since admitted to do so. Clause first, Section 5th, of Regulation 1st of 1816, granted no exemption from this personal appearance, beyond the specific one for females of a certain rank &c. The proceedings were therefore informal, but the Sitting Judge also thought they might be admitted by a Competent Court in two ways; either by striking the present Appeal from the File and permitting Appellant, on personally appearing, to revive or bring it on again without further expense to either party, or by giving Appellant time to appear personally and then permitting the suit to proceed. The case under this view was referred.

The Court was not satisfied with the objections taken by Respondent in regard to the non-attendance of Appellant in Court on the institution of the action, as prescribed by the Regulations; for he did actually appear and conform in every particular on its original institution in the lower Court. The Appeal was brought by Respondent, who was admitted originally to sue as a Pauper, and his attendance under such circumstances would be of no avail, as all that was usually required was done, viz. calling on Respondent to shew cause why Appellant should not be allowed to proceed as a Pauper, the first proof of poverty being always considered as sufficient for the admission of the Appeal, unless on Respondent pointing out objections, which she must have failed to do as the Appeal was formally admitted

by

by the Sudur Udalut. The objection should have been urged before the admission of the case; it was now too late and could answer no perceptible good end; wherefore the Respondent's objection was overruled.

The Court then stated to the law Officers the circumstances of both cases, and the light in which all the parties stood to each other, and demanded of them, whether the claim of Appellant, as adopted son, was good against Respondent as the mother, by adoption, of his adoptive father, for the whole of his property, or for half, or for none at all?

They answered, The decision by the Court of Appeal against the daughter-in-law in her own right was conformable to the Shastr, because she was childless. But having adopted a son, he by that means has a good claim for all the property. The Respondent, as mother by adoption, of that daughter-in-law's husband, ought to resign the property to Appellant, standing in the light of her Grandson, from his adoption by that son's Widow. However, if she as Grandmother do not choose to deliver up to Appellant, as her Grandson, the whole property, she is at liberty by the Custom of the Country to keep her own half of it. Our authority is this saying of Yagnyuwulkyu in the Mitakshura; "In making a division after the father's death, the mother also will take an "equal share." (17) From this and other passages we declare, that retaining her own share, she must give up the other remaining half to the son adopted by her daughter-in-law, to whom it of right pertains.

The Court again enquired, whether Appellant, the adopted son, or Respondent, the mother-in-law, of Ruma Baee, would now be liable for the maintenance adjudged by the Court of Appeal to be paid her by Respondent?

They answered, as long as Ruma Baee had no son, it fell to

(17) Book second, leaf 51st, page 1st, line 6th, Cole. 285.

to Respondent to maintain her. Now, since Ruma Baee has adopted a son, it is incumbent on that adopted son to maintain her, because it is the duty of a son to take care of his mother. (18)

The Court under this exposition reversed the Decree of the Tanna Court, and adjudged to Appellant, in right of his adoption by Ruma Baee, Widow of Huree Ramajee Bhide, the proprietary right in the village of Rahatouree, Turuf Chon, Pranth Kulyan, possessed by Respondent Thukoo Baee Bhide, the mother-in-law by adoption of Ruma Baee, she, the said Respondent, enjoying one half share of the produce of the village during her life time.

It was further declared that Respondent should not be liable, subsequent to the date of Appellant's adoption, for the maintenance adjudged to Ruma Baee under the Decree of the late Court of Appeal. Costs divided.

Decree 19th June 1823.

Respondent, dissatisfied with this decision, moved the Court for a re-hearing, pleading that the opinions of the Shastrees were good, supposing the adoption itself to be valid, but as the adoption was not valid, from incapacity of Ruma Baee to adopt, the decision in favor of the adopted son ought to be annulled by a fresh decision in her favor.

Prayer for revision of Judgment.

The Court handed to the Shastrees the Petition, in which Respondent had stated the circumstances which, in her idea, made the adoption of no force.

The Shastrees reported, upon each of its clauses,

First—That her assertion of the Muyookh being favorable to her case, as requiring the consent of Ruma Baee's husband, was unfounded, since it was therein distinctly declared, "The "commands of her husband are required even for a married "woman, because the adoption is made in his sight &c." (Vide Zilla

(18) Vide Case No. 86, and Note (12) to Bombay Cases No. 43.

Zilla Shastree's Vyuvustha,) from which it is clear that a widow has a right to adopt a son even without the commands of her late husband.

Second—She had referred to the Vyuvuharu Purisishthu to prove that Ruma Baee had no power to act for herself without the assistance of her husband's elder relations; and they admitted that it was written in that, and many other Books besides, but in all allowed to be permitted by the Vedus and Shastr; if it were believed that the Elder Relations had an intention of preventing such acts, no objection or prohibition existed against their performance; and this because the authority of the Vedu Shastr was far superior to that of Custom. And thus says Vinyaneshwur in his Mitakshura, "A woman must be restrained " (only) from unnecessary or useless acts."

Third—It was certainly true according to the Mitakshura, as quoted by her, that Ruma Baee, if labouring under sin, and expulsion from Cast, for dissolute and improper conduct, was not competent to perform such act, but this and other authorities also laid it down that when a particular sin had been removed by Penance, the offender became, from that Penance, entitled to perform all acts permitted to his own Cast. If it were not so the Books upon Penance would be a dead letter.

Fourth—She had quoted the words of Narudu in the Mitakshura (19) that " the son of a sinful Hindoo woman, as well " as the adopted or other (not lawful) son of a sinful Hindoo, " male or female, is called Oupupatik, " born in sin," or son of a " Sinner, and is not entitled to a share of inheritance." The first point, of the son of the woman, was true, but with regard to adopted or other sons, it must be observed, that a sinful woman had no power to adopt a son. As for the other ten ways of obtaining a son, they were not allowed in this age, Kulyoog, when any

(19) Book second, leaf 60th, page 2d, line 1st.

any but a lawfully begotten, or an adopted, son, was forbidden (20).

Fifth—Respondent had asserted, " that it was well known " that Ruma Baee was a sinner; and a woman only suspected " of fornication, was termed " Kurkusha" (21) and possessed " no power of acting; wherefore, since the crime was so clear " against Ruma Baee, she by the Law of the Shastr against " such person, possessed no power to act in any thing, and was " only entitled to a maintenance." But it was not to be taken for granted that Ruma Baee was such a sinner, since Neelkunt Shastree Thutte and many other most respectable inhabitants of Poona had signed the certificate in favor of Ruma Baee's adopting a son, and the Certificate of adoption also was signed by many respectable people who were present at it, which, with the fact thereby apparent of her feast having been attended by so many highly respectable people, proved clearly that they considered her then released by Penance from the sin which before would have disqualified her from performing the adoption as being " Kurkusha."

The Court having received this Vyuvustha, resolved to uphold their decision, and rejected the prayer for revision.

Disallowed. 15th Jan. 1824.

No. 87.

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(20) Vide Note (13) to Bombay Cases No. 43.

(21) Mit. Book second, leaf 57, page 2d, line 16th, Haritu " If a woman becoming a " widow in her youth, be headstrong" (Karkusha) " or suspected of incontinence, a " maintenance must in that case be given to her for the support of life." Cole. 340.

N°. 87.

JAMES JOSEPH SPARROW Esq. Collector of the South Konkan..... } *APPELLANT,*

VERSUS

TANAJEE RAO RAJA SIRKE.....RESPONDENT.

South Konkun Udalut, V. Hale, *Judge.*

Right of Government to resume lands granted in Fouj Surinjam, as maintenance of Troops, contested by the Grantee or holder.

Zilla Judge decreed restoration by Government of the resumed lands, for want of proof of their being held of Government.

Sudur Udalut held the Tenure to be for military service, but the lands not resumable till the holder refused to perform it.

RESPONDENT was plaintiff in the Zilla Court, filing a petition on the 1st March 1822, to recover from Appellant a half of each of the five villages of Sanje, Doortolee, Koodulee, Vidhat and Jamgaon, situated in the Nizampoor Tuppa of the Rajpooree Prant in the South Konkun, yielding a Revenue of Rupees 1756-3-87½ per annum. The Respondent, styling himself Deshmookh of the Dabhol Sooba, Sur Deshmookh of Moamlut Kaeree, and resident at the village of Koottra in the Turuf of Sunwurde, Talooka Unjunwel, (Dabhol) set forth, that his Family originally kept their Court at the Fort of Buheeroogurh on the Ghats overhanging Koottra, as Rajas of the surrounding Country, yielding a Revenue of Rupees 75,000 per annum, until the Peshwa's Government put an end to their independence by seizing the seat of their power in Summan Sittueen Miyat-wu-Uluf A. D. 1768, but entered into a Treaty with them guaranteeing to the family their Inams and Mokasa rights, with their Wuttuns as "Nemnook" or fixed possessions, as which they had continued to enjoy these Rights without interruption. Among these possessions a half share of the Government Revenue of each of the five villages sued for belonged to them, and they had levied it from the time of the above treaty until the year Ashreen A. D. 1819 | 20, when Appellant in the month of Bhadrapud attached their half shares in the villages through the Sur Kumavisdar of the Tule Sooba, and took the management into his own hands. Respondent therefore sued for recovery.

Appellant answered that according to the Custom of the Country,

Country, Respondent had been continued in possession of his Inams, but that he held a half share in each of these five villages, not as Inamut, but for performance of Silledaree service, in commutation for the pay of which service the half Revenues of these villages had been assigned to him. The custom of the Country sanctioned the practise, common under the late Government, of resuming the Revenues of all villages or Purgunnas assigned for " Surinjam," or payment of a contingent, whenever the Troops forming the Quota of the" Surinjam" were no longer required by that Government, and this practice of resuming Surinjam, he would prove both by oral and Documentary evidence. The Company's Government had at present no use for the Respondent's contingent, and had in consequence resumed the five half villages assigned him for its maintenance. This being the case it was clear that Respondent had no claim of right against it for restoration of them.

Respondent replied, that ever since the Peshwa took from their family Buheeroogurh and its dependencies, yielding a Revenue to them of Rupees 75,000 per annum, the possessions then assigned them, including the five half Villages which he now claimed, had continued in uninterrupted possession with them. The Peshwa's Government, when it required service, sent money for the maintenance of the Troops and for making the necessary preparations, and used now and then to furnish more when required for their Pay. Respondent's family had never done service for the possession settled on them under their Treaty, nor had the Peshwa's Government ever levied any thing from these five Villages held as part of the family " Nemnook." He would prove that the Villages had continued in their uninterrupted possession till taken by Appellant.

Appellant in rejoinder said it did not concern him whether *these Possessions* were given as a fixed assignment or for Silledaree Surinjam. The *half Villages* had been resumed as held in Silledaree Surinjam, which would not have been done,

done, had they been Inam Villages. Government had resumed them because they were decidedly held in consideration of service. With respect to Respondent's assertion of the Peshwá paying his own Troops, it was true that those enlisted in small bodies from the Hoozoor were paid every now and then in Cash, but where Villages or Purgunnas, or Jahgeers, were assigned to Silledars of the Country as Surinjam, it was common to resume these Surinjam assignments when their services were no longer required, Respondent had not touched upon this fact in his Reply to the answer wherein it was stated.

Respondent exhibited, the joint accounts of the five Villages headed "Accounts of the five Villages held in *Mokasa* by Ta-"najee Raja Sirke in the Turuf Nizampoor, deducting the "half-share expended (or credited to the Surkar) for the year "Tissa Miyaten-wu-Uluf or A. D. 1809."

Separate accounts for each Village for the year Summanu or A. D. 1808, being the Village account shewing the appropriation of half the Revenue to Government, and half as "*the* "*Mokasee Sirke's Nemnook.*"

The same for Jhide, Isne, and Tissa Ashur, and Ashreen, A. D. 1810-11, 12, 19-20, and 20-21, but the fact of possession up to that time was not the point in dispute.

Respondent gave in two other papers.

The first ran thus. "Memorandum."

"The representation of Sukhojee Raja Sirke, Jhide Tis-"sueen A. D. 1791. For the further securing to the Peti-"tioner's son Tanajee Raja by orders upon the Moamlutdars "the possessions guaranteed by Treaty to his own Father "Lukshumunjee Raja Sirke in the year Summan Sittueen A. "D. 1768, on the taking of Buheeroogurh, as *Kool Khurch* "*Nemnook* or "assignment for his full expenses," comprising "*Mokasa* and Inam Villages, and other *Nemnooks* held by "their father up to his death.

First

" *First.*—An order is required upon Trimbuk Krishn of " the Unjunwel Talooka, respecting his Inam and ancient Mo- " kasa villages, with his Deshmookee Huqs, the Nemnook in the " Buheerogurh Talooka which have been resumed.

" *Second.*—An order is required upon Chimajee Mankur " to keep the accounts of the five villages (in dispute) in the " Nizampoor Turuf of the Rajpooree Prant, held in half shares " by the Family as *Nemnook Mokasa* villages, in the same " manner as they had always been kept.

" *Third.*—An order to Anund Rao Bhikajee respecting the " Nemnooks, Mokasa and Wuttun lands held by them in the " kusba of Pour, in the Turuf Pour khore, (W. of Poona above " the Ghats) and keeping the accounts as usual.

" A representation having been made by Sukhojee Raja " Sirke to the above effect, and praying that an agreement may " be made in favor of his son Tanajee Raja being put in pos- " session, such agreement has been now made, that the Rights " shall be continued to him, Tanajee Rao; as held by the fami- " ly of old. Let three such separate orders therefore be caused to be given " Devave." Let them be given " Dene." This paper bore date 4th Shaban in the month of Chytru, Jhide. Tissueen A. D. 1791, without name or signature, but closing with these concluding words, " Devave" " Dene."

The second was an order from Head Quarters to the khotes of Turuf Nizampoor dated 15th Jumadee ool Uvvul Arba Ashur or 6th May A. D. 1814, directing them to settle a dispute with Respondent respecting the commutation for money of his *Mokasa* Huqs in kind in four villages out of five of those sued for.

Appellant gave in, Extracts from the Government Accounts for Subba and Isne Ashur Miyaten-wu-Uluf, in which half the Revenues of the five villages was struck off as " *Budul Moo-* " *shaira*" or " assignment in exchange for pay," to *Silledar*

" *Tanajee*

" *Tanajee Sirke.*" The villages were at the same time noted as Mokasa.

An extract from those for Isne Miyaten or A. D. 1801-2, in which, under the head of Budul Mooshaira, Rupees 651-1-25 were entered as the produce of the half share of the five Mokasa Villages belonging to Lukshumunjee Sirke, which had been paid in to Government as its due.

An attested Copy of an Extract from the Poona Duftur, attested by the Commissioner's Secretary, being " a List of Su-" rinjam &c. in the Konkan Sooba." Respondent stood sixth among ten persons holding Surinjam. The Surinjam of three of them appeared, by remarks in the margin, to have been resumed, and opposite to Respondent's possessions were these remarks.—" The three first Items being Surinjam, it has been " determined to continue them, and orders for release issued " accordingly—*The five next Items,*" *(the Villages in dispute)* " *being Fouj Surinjam, will not be continued.*"—This Extract was not dated, but appeared to have been taken from the Proceedings of the late Sole Commissioner soon after the change of Government, and forwarded to the Collector through the Bombay Government for carrying it into effect.

Naro Abajee Kane, knew that the five Villages in dispute had been held by Respondent up to 1741, or A. D. 1819 as " Surinjam."—It was not given on account of Service to Government, but had been held for private expenses. A " Mokasa" assignment for House expenses was called " Surinjam."—Had formerly seen some Villages noted down in the Nizampoor Turuf Accounts as Surinjam, but could not recollect their name.

Huree Wasdeo Bhate managed these five Villages for Respondent for 10 or 15 years, and knew them to be " Mokasa," and so entered in the accounts.—Respondent never did service for them to Government, nor had any of the Government Troops

Troops (Sioobundee) with him—He had held uninterrupted possession under the Peshwa's Government and since, until the resumption of the Villages by the Collector.—Credit was not given to him in the Government accounts for the half Revenues as " Mooshaira," but under the Head of " Hoozoor."—*Budul Mooshaira* was a Term never applied to Inam or " *Mokasa*," but to those who served for Pay, and had the same signification as *Fouj Surinjam.* When Inam was given it was always by a Sunnud under the seal, and recorded in the Duftur. (This observation was probably made because Respondent only exhibited the " Memorandum" as his title deed.)

Krishnajee Kasee proved Respondent's possession of the five villages, held neither in Inam nor " Budul Mooshaira," but as " Mokasa Nemnook." Government always granted deeds for Inam, or " Nemnook," but witness could not say whether they should be Signed and Sealed or not.

Krishn Rao Baboorao Vicharee, had the Guard over the gate at the house of Nana Furnavees; knew that Respondent had held the five half Mokasa Villages in uninterrupted possession as " Khasgee (personal or Zat) Surinjam."—Respondent never performed service for this Surinjam which was given for the maintenance of the family—" Budul Mooshaira" was a term applied to the pay received for service.

Abajee Anunt Poorohit, a writer in the Furnuveesee Duftur, said that a " Memorandum of Settlement," signed only with the words " dene" or " devave," " to give," or " to cause to give" by the Surkar, was always considered valid, and binding. The word " Devave," was written on such Documents by the Minister Nana Furnavees, and the word " Dene," by the Surkar (Peshwa) himself. Papers so signed used to be sent to Chinto Punt Deshmookh to be by him duly entered in the Duftur, and when so entered were marked with the word " Bar" or " entered," as was the present one. " Budul Mooshaira" was applied to the pay received for Troops. " Mokasa" was understood as a

" Nemnook"

" Nemnook" or fixed allowance which a man might stay at home and enjoy; it was sometimes given under the Peshwa's Government for service, and was resumed when the holder was discharged. Respondent's family did not perform service in return for their receipts from these villages, but received a distinct Pay for service whenever they were called on to perform it. Respondent had lived retired at Koottra for about a year before the change of Government, and never performed service for the Peshwa's Government since Isne Miyaten-wu-Uluf A. D. 1802, when he was sent by that Prince with other Troops against the Fort of Koaree, and Respondent then was supplied with cash by the then Prime Minister Balajee Koonjur. On the part of Appellant, Siooram Gopal Baput, in the service of the Collector, proved the accounts to be true Extracts from the Peshwa's Dufturs sent down from Poona to Bankot soon after the acquisition of the territory. " Budul Mooshaira" meant Pay for service. " Mokasa," an allowance to a Family for a maintenance.

Lukshumun Mulhar, of the Collector's office, spoke to the same effect, adding that the Villages were resumed by orders from the Bombay Government. On the part of Appellant, he gave in a Form of a regular Inam Sunnud, to compare with the memorandum exhibited by Respondent.

Whioojee Dulput Rao deposed, that Respondent had for fifty years held service with the Peshwa, and continued to perform it till the change of Government. This service was to accompany his Lord (Dhunee) on horseback wherever he went. Witness had known Respondent for thirty years; his residence during that period was at Poona, whence he now and then got leave to go to his home for a month or two. Did not know whether Respondent was engaged on service during the last war or not. Witness returned to the Konkan about three years before the acquisition of the country by the British, and Respondent was at Poona at that time. He used to wait on the Peshwa with three or four attendants. Did not know whether

all

all the great men did the same. The Raja Angria used now and then to wait upon him.

The case being closed, the Court proceeded to pass judgment, and in the first place remarked, that the cause of action came under the provisions of Section 2d Regulation 2d of A. D. 1815. (which says, " Pensions which may have been granted by the " Native Governments, either wholly or in part, as indemnifica- " tions for altumgah, ayma, or other land (held by Sunnuds " conferring a right in perpetuity resumed by such Govern- " ment), shall not be liable to resumption on the death of the " persons who now receive them, notwithstanding that such re- " sumptions made part of the original order issued for the con- " firmation of them, but are to be regarded as property, and are " to descend to the heirs of the present and future receivers, " and are declared liable to be sued for and inherited in the " same manner as other property,") so far as that the Grant in question was a Pension bestowed upon the ancestors of Respondent, and continued to the latter until the year 1742 of the Hindoo Æra.

The right of Respondent to continuance of this Pension or Grant of the Revenue of the five Villages, rested solely on the questions, first whether it was or not originally granted as *Fouj Surinjam*, or payment for services. And secondly, whether it had not, notwithstanding it might have been originally so granted, subsequently been held free from such stipulation, which would thereby, under Section 6th Regulation 2d of A. D. 1815, entitle Respondent to a judgment in his favor, as his by prescriptive right arising from long receipt.

The Court on these questions decided that the Memorandum exhibited by Respondent did not bear those marks of an official document of the late Government, which would justify the Court in admitting it as decisive of the Grants being made as therein specified, but this was immaterial, because the enjoyment by Respondent of the villages until attached by the Collector

lector in 1742, was admitted. There were no documents to shew that the Grant had been held as *Fouj Surinjam* except the unauthenticated accounts, said to be from the Poona Duftur, exhibited by Appellant, of which there were none of a later date than Isne Ashur, eleven years ago. The List "of Surinjamees" was no evidence whatever against the Respondent. No testimony was before the Court that any service beyond that of an attendant at the Court of the Peshwa on matters of state had ever been done by Respondent. Under these circumstances the Court conceived Respondent entitled from long prescriptive right to the Grant of Revenues he claimed, and therefore awarded to him the Shares of the five Villages, as sued for with Costs.

Decree 11th May 1822.

Appellant exhibited three original Documents from the Peshwa's Duftur, attested by the Commissioner's first Assistant.

Sudur Udalut, *Sitting at Rutnagiree before* T. Barnard, *Fourth Judge.*

"A Memorandum in Summaneen A. D. 1880 of the pos-
"sessions in Surinjam and Inam of Lukshumunjee Sirke,
"assigned to him in Summan Sittaeen A. D. 1768, on account
"of his debts."—These five Villages were therein noted.

The original, from the Duftur, of the "Memorandum" exhibited by Respondent, with which it agreed in date, number, and value of the Villages &c., but besides some immaterial discrepancies, a most material one is observable in the very heading of it.—The original from the Duftur ran thus, "Memoran-
"dum respecting Suckhojee Raja Sirke in the year Jhide
"Tissueen.—There are certain Surinjam assignments both for
"Puttuks" (companies of Horse of no limited number) "and
"for Zat, or personal expenses, and also Inams; in the name
"of my Father Lukshumunjee Raja.—He is now dead, where-
"fore I pray that you will fix in the name of my son Tanajee Ra-
"ja by orders to the Moamlutdars, the same Puttuk and Zat Su-
"rinjam" (Inams not mentioned as they would descend of right without confirmation or reinvestiture to the legal Heir) "as
"formerly held by Lukshumunjee." At the end of the first clause,

clause, were these words, forming in the original the commencement of the second—" 2d. An order is required to Chimnajee " Mankur that the accounts of the Surinjam, *which is held* " *under the Head of Puttuk*, may be kept according to the " Treaty." The concluding Paragraph was equally at variance with its corresponding one in Respondent's copy.

The original " Memorandum" or " Minute" for drawing out the Sunnuds under the Treaty with Lukshumunjee Raja Sirke on the 7th Suffur Summan Sittaeen A. D. 1768. The names of all his Inam Villages and Possessions were mentioned, but not those of the Villages in dispute. One of the clauses however ran thus, " The above named Lukshumun Raja has a Puttuk of 20 " Horse at the Hoozoor, for the Pay of each of whom the sum " of Rupees 175 per annum, hard cash, has been stipulated, " making their total Pay Rupees 3,500.—As Nemnook in " assignment for this sum he has Surinjam in the Rajpooree " Prant, and Pourkhore Turuf; it must be looked into, and " out of the Receipts Rupees 2,000 being assigned to him, the " Excess, if any, must be carried to the credit of Government. " —The remaining Rupees 1500, shall be paid by weekly " instalments."

An attested Extract from the original Register of Jageers in the Poona Duftur for the year Jhide Miyaten wu Uluf A. D. 1800 | 1 as follows.

Sukhojee Raja Sirke.

Zat or personal Surinjam and Inam villages, 6,000 0 0

For the yearly pay (Begmee) of Horsemen

20 men, a half share of the Revenue of five villages in Turuf Nizampoor.....	1,317-3-31¼	Romer, *Chief Judge*
Seven villages of the Pour-Rhore Turuf, being Mokasa,	2,454-2-31¼	
	3,772-1-62½	Suit for removal of an
Rupees	9,772-1-62½	

With

With these were handed up, A declaration attested by the Commissioner in the Dukhun as made before him by Gungadhur Bullal, a dependent of the Sirke family, who stated that Respondent with his Quota of 10 *Horse*, until the end of the War was kept about the Court, on Hoozoor Chakree, and did duty at Head Quarters during the whole of the war, and the same person's examination taken on oath and attested by the Collector of Poona. He stated therein, that from the time when Respondent's Grandfather Kanojee Raja Sirke came from Sattara he had served the Peshwa's Government with a Quota of *ten Horsemen* among the Hoozoorat, (a Body of Cavalry whose Horses belong to Government) and that Respondent held this service until the end of the War.

The Court observed that Appellant had adduced in proof of service being a condition of the Grant, various Lists, in which Respondent's name appeared as a *Silledar* (?) in the Peshwa's service. Among them was that exhibited in Appeal, authenticated by Mr. M'Leod, first Assistant to the Commissioner, as a Record of the Peshwa's Government headed with the Terms " conditional and unconditional Grants" (Surinjam and Inam) in which the contested Grant was mentioned among others. Two others, similarly authenticated, mentioned the Grant as conditional, and the condition to be service. These were all dated within 60 years of the present time, the latter within twenty. There were various other documents to the same effect, but the issue was sufficiently determined by the above three. Another similarly authenticated document fifty five years, old, " the Memorandum of the Settlement under " the Treaty," contained accounts shewing that Respondent's father had *claims* (1) on the Peshwa's Government for actual services, but whether this Grant had any connection with them or not, did not appear. The Court however considered it proved, that the Grant was originally attended with the condition of service, and that this condition was understood to be in practise within 60 years; of what nature was this service,

service, or to what extent, any further than that it was Military, did not appear, nor perhaps would it be easy to determine. It was decreed that Respondent be continued in possession of the disputed Revenue, reserving to Appellant, who was to bear Costs, the right to demand any service that he might prove obligatory in lieu.

Decree 6th Dec. 1822.

N°. 88.

ICHHASHUNKUR SHEOSHUNKUR.. ....APPELLANT,

VERSUS

MT. BEEJEEBUHOO, Widow of LUKHMEESHUNKUR.... ..... RESPONDENT.

THIS Appeal was brought to recover back from the Respondent Rupees 106-2-60 the excess of Costs allowed to her, on an original suit, brought by her, for removal of an attachment placed by the Appellant on a house valued at Rupees 408, to which she had laid claim.

Surat Udalut, J. Payne, *Act. Register.* 2788 of 1820. Decree 26th March 1821.

The Appellant, holding a Decree against Koornashunkur Duyashunkur for Rupees 117, attached the house in execution, and this act occasioned the original suit on the part of the Respondent.

Judge's Court in Appeal, 2141 of 1821. J. Kentish, *Act. Judge.* Decree 21st May 1822.

The Acting Register decided this cause in her favor, and ordered the attachment to be removed, awarding Costs on the amount value of the house, or Rupees 350, against the Appellant.

Sudur Udalut, (Special Appeal,) *Sitting Judge,* J. Romer, *Chief Judge.*

Who Appealed from the decision on two Grounds. First that the attachment ought to have been maintained, and secondly that an excess of Costs was given against him, but he laid his

Suit for removal of an attachment must be laid in the amount of that decree

under which attachment issued.

his Appeal, in the same amount that Respondent had valued the house at in her original suit against him.

Excess of Costs disallowed on a Suit filed at the value of a house attached for a smaller sum.

The Sitting Judge said it had already been decided "that a "person suing to raise an attachment can only recover Costs to "the extent of the interest he might have in making void the "process against property so situated;" in other words, for the amount of the Decree sought to be satisfied out of such property. So much of the Respondent's Costs therefore, in the original suit, as had been made payable by the Appellant, beyond what was due by him, taking the amount of his Decree against Koornashunkur, or Rupees 117, as the basis of the calculation, should be struck off. They amounted to Rupees 68-1-80. The Appellant, however, under this rule was not entitled to the same exemption for his own Costs, on appealing the Suit at its original amount, or Rupees 408, to the Judge's Court, for it was in his option to have laid his Appeal at the lower sum of the amount of his Decree against Koornashunkur.

Under this view of the case the Sitting Judge referred it, with his opinion that the Acting Register's Decree should be amended to the following extent: Rupees 68-1-80 to be struck off from the Costs awarded against the Appellant by the Decree in suit No. 2788, and a sum corresponding to the Costs on this amount only to be made payable by the Respondent, in the Appeal No. 2141, allowing the Appellant his full Costs in the Sudur Udalut.

Competent Court.
J. Sutherland, *Second Judge*,
E. Ironside, *Third Judge*.
Decree 22d Feb. 1823.

The Sudur Udalut agreeing with the Chief Judge in his view of the principle for regulating Costs in these cases, decreed that the sums of Rupees 60-2-40, Excess of costs, awarded to Respondent in Suit No. 2788, according to the amount for which the property was attached, and not, as erroneously done, on the value of the same, be paid by the Respondent with proportionate Costs on the same amount, or Rupees 60-2-40, in the Sudur Udalut.

N°. 89.

ICHHARAM SHUMBHOODAS,.....*Appellant*,

VERSUS

PRUMANUND BHAEECHUND,.....*Respondent*.

Sudur Udalut, G. W. Anderson, *Judge*.

Suit between two Cousins for the Estate of their common maternal uncle, the defendant supporting his title with a deed of Gift. Right of both declared null during the life of their aunt, a third sister of their uncle.

APPELLANT sued Respondent on the 27th January 1820, in the amount of Rupees 1600, to prove his Title by right of inheritance to the Estate of his Maternal Uncle, Roopchund Krishundas, lately deceased without Issue, and whose Estate, worth about Rupees 5,000, had been seized on by Respondent, who was likewise a Nephew of the deceased. On the same side, Appellant said he had prevailed on the Court to attach the property, and to take Security from Respondent, who got these orders reversed by motion to the Court of Appeal, and Appellant was thus left to his remedy by the present action.

Respondent answered that Appellant had no just right or Title to the inheritance of their Uncle, because this Uncle had bequeathed the whole of his Property to Respondent by a duly registered Will, under which he had taken possession, and performed the Uncle's funeral ceremonies.

Appellant said the Will was obtained from the Uncle when on a sick bed, and not in his right senses.

Respondent gave in the Will, or Deed of Gift by Roopchund in his life time, to Respondent of all his property, worth altogether Rupees 1,997.

The Court discovered that Roopchund was childless, but had three Sisters, two of whom were dead, each leaving a Son, one of the Parties in this case, and daughters, and the third Sister was still living but childless. The Shastrees were therefore desired to state, whether under these circumstances, the Deed of Gift in favor of one Sister's son, to the exclusion of the son of the other, was valid, or not?

They

They answered, that the Right of inheritance pertained to the surviving Sister; for the Rights of the two other Sisters were lost, by their dying before their Brother, wherefore their sons could not claim the Estate of their deceased uncle, until the death of the still surviving Sister. (1) However, should this surviving sister of her own good will declare her desire of resigning her right to the property, the sons of the other two sisters would succeed each to an equal, or half, share of it, as their own sisters again had no right to share. It was not competent for the deceased uncle under the Shastr, to give away the whole of his property to one of them to the exclusion of the other. (2)

The Court then called up Umba Baee, the surviving sister of the deceased Roopchund, to ascertain her wishes respecting the property—she declared her intention of taking it herself and refused to resign it.

It was decreed that Appellant was unable, during the life of his Aunt Umba Baee, to advance the claim he now sued on, and a nonsuit was pronounced, giving all costs against him.

Decree 11th June 1822.

Sudur Udalut, *Sitting Judge.* J. Sutherland, *Second Judge.* Decree 4th March 1823.

The Court having consulted the sitting Shastree, and learnt from him that the opinion given by the Zilla Shastrees was perfectly correct, affirmed the Decree of the Zilla Judge against Appellant with all Costs.

No. 90.

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(1) Under the authority of the Muyookh, quoted in Notes (2 and 3) to Bombay Cases No. 16, and Note (1) to Bombay Cases No. 45.

(2) Vide Case No. 2.

N°. 90.

MEETHA KUCHURA (commonly called TOM the BARBER,) and His Sister SHEO, } APPELLANTS,

VERSUS

BHANA MUNGUL, and all the other members of the Soorutee Walun, or Surat BARBER, Cast..... } RESPONDENTS.

Sudur Udalut, G. W. Anderson, Judge

ON the 20th June 1820, Appellants filed this suit against Respondents, to recover from them Rupees 1,600, damages for loss of Cast.

They said that about two months before, the Respondent Bhana, who had lately succeeded as Head of the Cast, and was their enemy, had warned them at a public meeting of his having expelled them the Cast, the effect of which was that they had from that time neither been allowed to receive Luhana nor to attend the Cast feasts. They sued therefore in this amount to obtain readmission to Cast privileges, intending to sue hereafter for damages for loss of Character.

Claim by Appellants for restoration to Cast from which they were expelled for eating with a person of a lower Cast.

Expulsion Confirmed until performance of the Penance required by the Cast Rules.

Respondents pleaded that it was a Rule among Hindoos, laid down in their Shastrs, that whoever should eat with a person of another Cast, or take a woman of another Cast into his house, and eat food prepared by her hands, could not be among the members of it. Between 9 and 10 months ago, Appellant Meetha had taken into his house a woman named Jiookoonwur, who was excommunicated, and had eaten food dressed by her. As soon as they knew this the Cast asked Appellant about it, telling him it was not proper. He said there was no harm in it and he was very fond of her. Since he thus set their Rules at defiance, his expulsion was justifiable and necessary.

Appellant denied that he had ever eaten with the woman Jiookoonwur,

Jiookoonwur, who lived in the lower part of his house, whilst Appellants lived above, and ate food cooked by themselves.

Respondents in rejoinder said that Jiookoonwur was of the Carpenter Cast, from which she had been expelled for loose behaviour, and it had been already proved before the Sudur Ameen, in a suit filed by Jiookoonwur against Appellant Meetha, that all which they had asserted was true. His own son Prubhoo, and sister Ruttun, had complained to the Cast in the first instance, of Appellant's having brought this woman from Unkuleshwur and of his living in criminal intercourse with her. The Appellant was then turned by them out of doors, and a complaint was preferred on the Magisterial side of the Court. Appellant afterwards took another house, but still kept this woman. It was quite impossible for them, knowing these circumstances, to admit him among them. The act was a deliberate one of the whole Cast, to which Appellant's son Prubhoo was a party, and respecting which a paper of Bye Laws, or Bundobust, had been drawn up.

Appellant produced copy of a Decree of the Assistant Register's Court in January 1818 awarding to a member of the Cast Rupees 300, as damages for expulsion from it.

Respondents produced three Papers of Cast Bye Laws, the first dated 3d Chuytur Sood 1875 or 28th March 1819, whereby forty four Members of the Cast, Appellant's father among the rest, styling themselves "the whole Punchayut of the Soorutee "Walun, or Barber Cast," agreed to punish man, woman, or child, (daughter, Sister or Husband) who should be guilty of fornication, by putting them out of the Cast.

The second dated 10th Chuytur Vud 1876, or 8th April 1820, was a paper given to the three Heads of the Cast by Prubhoo Metha, Appellant's son, his Sister Ruttun, Brother Nuthoo Kuchura, and Nuhanee, widow of Bhoola Nagur, declaring themselves liable to the Penalties of Cast, if they either ate or drank,

drank, or had criminal connection, " bud fail," with the woman whom Appellant had brought into his house.

The third dated 12th Vueshak Sood 1876, or 25th April 1820, was a Power delegated by the whole Cast to three persons, Mungul Bhoola, Kishundas Jugdeesh, and Kesree Dhoolubh, " in consequence of a custom which had obtained of " members taking women of another Cast to live with them " in their own houses, thus destroying the principles of Cast " division." The power purported to be granted with a view to enable these three persons to put down the custom, further granting them full power to expel from Cast, or to fine, or punish as to them might seem fit, all persons guilty of improper or loose practises, or disobedience to their orders, the Cast hereby engaging to uphold all their acts done under this authority, and to bear jointly all expenses which they might incur by prosecutions for performance of the duty thus assigned to them. Provided further that any man expelled by the Cast, who should give 100 Maunds of Gram as an expiation and atonement for his fault, to the Pinjure Pol (a Kind of Menagerie in Surat assigned for the residence of Cows and other animals supported by donations of food, or money to purchase it for them, given by many of the rich Hindoo inhabitants,) might be by their consent readmitted into the Cast. Any one breaking this Rule, to pay them the usual Cast fine. A person was declared pure again, after a pilgrimage to the Limree Matha, and performance there of such penance as " the three" should impose. It thus concluded, " we have passed this writing with our " own free will, without deceit. Let us and our descen- " dants, the whole Punchayut, Bal Gopal, great and small, " keep this as immutable as the sun and moon from this day " forth."

It was registered in the Udalut on the 20th May 1820, and signed by 63 men and four women.

Gopal Bheeka, Gour of the Cast, was called by Appellants,

lants, and deposed that about a year ago Appellants came and complained to him that they were about to be turned out of Cast, as they heard; that they gave him a rupee and a quarter as his Fee, and begged him to collect the Cast on their account. At the meeting which he called, the Appellants demanded why they were expelled, and were told by the Cast, that Appellant Meetha must put away the woman of a different Cast whom he kept in his house, or else should remain out of Cast. Appellants then went away. The members of both sects were present.

Appellants named other witnesses to prove a general negative, which the Court did not consider necessary, and declined calling them.

Respondents brought two witnesses—Deveedas Mohundas knew the parties in the Suit, as well as Jiookoonwur. Went one day to Appellant's house to take him a Border for his Wife's dress, which he had sent for; went up stairs and saw Jiookoonwur handing food to Appellants—she was not herself eating. No other person was present—Did not sell the Border to Appellant, as they could not agree on the price. The cooking place was up stairs, had never been there before or since.

Bhugwan Dhoolubh, went one day to the Appellant's house to receive Rupee 1-2-0 due for dying a Kummurbund for Appellant; went up stairs and called out; was answered by Appellant Sheo, who said her brother was eating his dinner. Offered to go below, but she said he might come up; then saw them both sitting down at their meal. The food fell short and Jiookoonwur brought them a fresh supply—asked Appellant where his wife was, and was told that they could not agree, so he had got the other woman to live with him. Witness did not know Appellant's wife, and had never seen her. Was led to think that Jiookoonwur could not be that Wife, because Appellant had confessed to him before that he had got a strange woman living with him.

The

The Court found from the suit filed by Jiookoonwur against Appellant, that he in his answer thereto had admitted that he gave her certain Jewels to wear. She was confessedly of a bad character, a prostitute. Appellant had pleaded that he only received her as a lodger, but he adorned her with ornaments, and his answer to her claim proved an unusual degree of intimacy considering her to be of a strange Cast. Two witnesses had sworn to having seen Appellants eating food brought by her. Setting this aside however, it was not to be believed that the connexion was innocent, nor could it be so imagined as that it would be just forthwith to pass an order that the Cast should receive the Appellants. The Court thought that so far from this being necessary, every circumstance tended to establish that a criminal intimacy and connexion did exist, and therefore the Cast was justified in the exclusion. Judgment was therefore given against Appellants with all Costs of Suit, the Court so far interfering as to decree that on Appellants going through the several Prayuschittu or Penances according to the Custom of the Cast, they should be received into the Cast.

Decree 12th June 1822.

The Sitting Judge made the following observation on the subject of this case, that few of the acts of Punchayuts are founded on motives perfectly free from a feeling of enmity in some of the expelling members; hence the usual ground for bringing the act of a Punchayut before a Court of Justice was stated to be malice. The principles on which Punchayut disputes should be judged, were now generally admitted to be those which authorized the least interference with the institutions which those classes of the community, using such modes of control over the members, had established for themselves. On such principles it would require clear and decisive proof of malice and violence combined to justify an interference with the act of the expelling Members. In the present case there was no such proof. The Cast were probably not unanimous for expelling Appellants, which would afford them a better chance of being readmitted on easier terms, when they failed to force the point by an Appeal

Sudur Udalut, *Sitting Judge*, J. Romer, *Chief Judge*.

peal to legal proceedings. It was in their power at any time by compliance with their Cast rules to obtain readmision. On this view of the case, the Decree of the Zilla Judge was affirmed with Costs against Appellants.

Decree 11th March 1823.

On the 26th May, Appellants presented a Petition to a full Court, which referred it to the Sitting Judge. It was made with a view to obtain a revision of Judgment, on the grounds that after the Zilla Judge had passed his Decree, he had on the motion of Appellants consulted the Cast through the Shastree, and half the members of the Punchayut had declared that no custom of Penance existed in their Cast, because they were permitted to eat with any other Cast without becoming "impure" or liable to Penance. Next, that the Bundobust was not an act of the whole Cast, but of three or four persons, and he prayed therefore that the whole Cast might be called up, and their votes taken on the point, when it would be seen that he ought to be readmitted to the rights of Cast.

The Sitting Judge thought there was no sufficient reason shewn in the Petition for any interference with the Cast, as the Appellant had only to submit himself to the judgment of the Punchayut in order to bring his difference with them to an end.

Appellant stated that they would not assemble to receive his submission. The Court questioned the Respondents on this point, and the parties agreed that a meeting of the Cast should be held to consider the question of his readmission. On the 16th June the case was again brought forward, when it appeared that a meeting had been held but nothing decisive effected because Appellants objected to the great expense they were required to incur. Respondents thereupon informed the Court that as Appellants shewed a willingness to conform to their terms they would be satisfied with Rupees 300, as sufficient to defray all the expenses, for the ceremonies, alms &c. and that this should not be exceeded. The Sitting Judge therefore,

not

not considering it necessary to refer the case to a full Court for revision, fixed the above sum as the price of Appellants' readmission to Cast.

On the 20th Appellants presented a further Petition to a full Court for revision, the prayer of which was rejected under the above proceedings of the Sitting Judge.

N°. 91.

Mt. LADLEE, daughter of SUYUD HUEDUR, ... } *APPELLANT,*

VERSUS

SUYUD GHOOLAM SHUJAUT; SHUREEF OOD DEEN MEERJEE; SUYUD UMEEN SAHIB MEER SAHIB; and SUYUD FAZL ULEE, DEEWANJEE..... } *RESPONDENTS.*

Keira Udalut, G. L. Elliot, *Register.*

APPELLANT filed her Suit againist Respondents on the 6th September 1821, to recover Rupees 800, balance of her share for three years, of the profits of the village Vasuna Boozoorg, Prunt Matur. It was stated in the Plaint that the parties were of the same family, that of Suyud Julal, and all resided at Ahmudabad. The village was given to him in Inam under the Moghul Government, and the present shareholders were the families of Appellant; of Respondent; of Beebee Mah; of Imam Huedur Bukhsh, and Suyud Hussun Ulee Gheesa.—The profits of the village were portioned out in the proper shares up to St. 1873. The next year a dispute arose among the respective shareholders about their shares, and the collector in consequence placed the produce of the three next years St. 1874-75 and 76 in deposit with the Firm of Govindram Muncharam Suraff, until they chose to settle their dispute, when he promised to give up the money to them. In St. 1876 they referred the dispute for settlement to the Ahmudabad Qazee, who took

Deed of Division valid, if [illegible] written [illegible] and finished on unstamped or plain, paper.

took from them a Kurardad Namu, or agreement to abide by his decision. He settled that Appellant should receive 22-2-0 per cent of the whole amount, and awarding the same to Respondent Ghoolam Shujaut, and to Umeen Sahib, another of the Respondents, gave to Suyud Imam Huedur Bukhsh, Rupees 9 per Cent; to Suyud Hussun Ulee, Rupees 8-2-0, and Rupees 12 to Beebee Mah, delivering to each and all of them a writing for their respective shares—Appellant received Rupees 200 the same year as part of her's, but Respondent would not let her take any more. Her share of the profits of 1874 was Rupees 427-2-0

1875	"	382 2 0
1876	"	405-0-0

which gave her full share for three years .... Rupees 1,215-0-0
and deducting the sum received and expenses, " 415 0 0

left the sum sued for ..... Rupees— 800-0-0

Respondents in answer denied that Appellant had ever regularly shared with them the profits of the village, but used to receive up to St. 1873 a fixed allowance of Rupees 34 per annum, for which they had regular receipts; that even this allowance was not taken all at once but in small sums by Appellant, who allowed the balance to remain in their hands. Her father with her Uncle Ubdooljud and another sharer passed a writing on the 22d Shuwal A. H. 1163 to Respondent's Grandfather Ubool Sukoor, declaring that they possessed no right to more than this 34 Rupees. This Deed was attested by the Mooftee, and Appellant's son passed another in 1232; promising to abide by its conditions. They said the village was in their names, and the Kurardad Namu, by which they had in 1876 agreed to abide by the decision of the Qazee, was annulled by a writing since passed by Appellant agreeing to hold it of no effect but to act upon the Deeds, by which she was to get Rupees 34 only.

The Court found two points necessary to be investigated, first whether the Deed of division drawn up by the Qazee in

1875

1875 was sanctioned by the wish and consent of Respondents under the Kurardad Namu; for if not, it was of no avail. Second, whether Appellant wrote the Paper, giving up the claims which she had under this decision.

The decision was passed by the Qazee as a Tukseemnamu or Deed of division to the effect stated in the Plaint. Respondents Ghoolam Sujaut and Fazul Ulee denied the signatures under their names at the foot of it to be in their hand-writing. The other two Respondents admitted their signatures.

The Court held this Document to be incorrect and invalid under the provisions of Regulation 14th of 1815, which required it to be on stamped Paper. The date corresponded with the 13th November 1819, and the above Regulation was to have effect in the new territory from the 11th September 1819. The Document in question was written partly on stamped paper of one Rupee value, and partly on plain paper attached. It became a question therefore whether the affixture was to be on stamped Paper or not, and it was to be inferred that it was required to be so, by the 34th Section of this Regulation, which provided for the completing of pleadings on additional Rolls of Paper, of a certain value, and for all miscellaneous petitions, and for applications in the Revenue and Judicial Departments being completed by additional Rolls in the same way, when not able to be comprised in one sheet. The Court was therefore under the necessity of dismissing the Suit with Costs.

Decree 14th June 1822.

The Sitting Judge did not concur in this Application of the section quoted. It had no reference to papers the stamps of which were regulated by Sections 13th and 23d, and this Tukseemnamu came directly under the provisions of these Sections. In fact the Regulation was entirely silent on the subject of additional Rolls being required to complete any of those Bonds or Instruments, required by Section 13th to be written upon stamped Paper, and provided the stamp was of the proper value, and the additional paper duly authenticated, there was nothing in the Regulation

Sudur Udalut,
Sitting Judge.
J. Romer,
Chief Judge.

Regulation to prevent plain paper, when necessary, being so used along with stamped Paper, certainly nothing which could in any way be construed into the power to render null and invalid a Deed so circumstanced. In the present case, the value of the stamped part of the paper was much higher than was absolutely required, and there was not any reason to suppose that defrauding Government of part of its revenue arising from stamps, entered into the contemplation of the parties who had the Deed executed. The use of an unusually large letter and handwriting appeared to have been the only cause for requiring additional paper. The case was therefore referred to a full Court, which passed an Interlocutory Decree allowing Appellant to go into proof of the Tukseemnamu.

Competent Court, J. Sutherland, *Second Judge.* E. Ironside, *Third Judge.* Interlocutory Decree 8th May 1823.

Suit resumed before A. Bell, *Register.*

The Court considered the Tukseemnamu proved and established by the evidence adduced by Appellant, as also that she was entitled to the full amount claimed by her for the three years, by production of accounts for the two last of them, and non-production of them by Respondents in mitigation of the sum claimed for the first years, during which they had kept the accounts. The sum sued for was therefore decreed to Appellant with Costs.

Decree 9th Feb. 1824.

Sudur Udalut, *Sitting Judge.* J. Romer, *Chief Judge.* Decree 8th March 1824.

The second Decree of the Register's Court was affirmed in Appellant's favor with Costs.

N°. 92.

KASEERAM JOEETARAM,.....*APPELLANT*,

VERSUS

BHUGWAN POORSHOTUM.....*RESPONDENT.*

Kaira Udalut, G. L. Elliot, *Register,* Sonar Cast.

APPELLANT filed his Suit on the 3d December 1821, for Rupees 800, as damages for Breach by Respondent of a marriage contract, entered into for the marriage of his daughter Muhakoonwur with Appellant.

From

Suit by Appellant to compel performance of a written contract of marriage.

Contract declared by the Zilla Court not actionable for want of a proper stamp.

Mungnee proved but Respondents exonerated on evidence of Cast that a Mungnee may be broken.

Sudur Udalut on further evidence reversed this Decree, and held Respondent to his contract.

From the plaint it appeared that both parties belonged to the Cast of Sonees, Appellant residing at the village of Dakor in the Thasura Prant, and Respondent at the town of Thasura. The Mungnee was made on the 2d Margsur Sood A. S. 1874 or 7th December 1820, and Rupees 441 were settled to be paid by Appellant; the Chandla then was affixed by Respondent with the usual ceremonies, and Appellant on the same day paid Rupees 101 of the sum agreed on to Respondent and distributed Gool &c. to the Cast as usual. The latter however now refused to surrender his daughter, or to complete the marriage, which by the Rule of the Cast it was indispensible for him to do when once the Chandla ceremony had been performed, so Appellant sued to compel him.

Respondent totally denied having executed any contract for marrying his daughter to Appellant, or having received from him the sum he mentioned for that or any other purpose. He said it was moreover not true that the Rules of the Cast respecting Mungnee were as Appellant had stated them, for many contracts had been dissolved, as respectable members of the Cast would declare. He added that such contract would appear absurd when it was known that his daughter was only three years old, and Appellant at least forty and a near relation of the child, being the maternal first Cousin of her Maternal Grandfather which brought him within the degrees of kindred forbidden by the Hindoo Law.

Appellant handed up the contract, drawn up on stamped paper of the value of two anas, passed by Appellant's brother Jugjeevun Joeetaram, to Respondent, declaring that as his brother Appellant had married Muhakoonwur, he should pay down Rupees 251 for her ornaments, Rupees 25 for clothes, and that whatever was customary in the Sonee Cast should be exchanged between them, the whole sum agreed for being Rupees 441, out of which Rupees 101 to be paid down immediately, the balance when the marriage actually took place.

Aditram

Aditram Purjaram was constituted Security for due performance of the contract.

The Court held this contract to be invalid by Regulation 14th of 1815, because not written on stamped paper of sufficient value.—Appellant was therefore called on for proof of the Mungnee, and of the delivery of Rupees 101 in Cash at the time of Contract.

Four witnesses distinctly proved the Mungnee having been made after settlement of the Terms laid down in the contract, and actual delivery of Rupees 101 to Respondent, who returned one Rupee and a cocoa nut to Appellant, who then distributed the Gool among a great many persons who were present. The papers were then drawn up and exchanged and the ceremony closed.

The Court considering it proved that the Mungnee or marriage contract, was entered into by Respondent, then called up the Heads of the Cast to know, whether such a contract must be executed in presence of Members of the Cast, or whether it would be valid if executed without any of the Cast being present? and to state those customs of the Cast which were held necessary for rendering a marriage contract valid, and whether a marriage contract might be dissolved? Three of them said, a marriage contract (Vivah) did not require the presence of persons of the Cast, but would be equally valid, supposing it agreeable to both parties, if witnessed by persons of another Cast. The Custom of the Cast on these occasions was, when the marriage had been determined on, to settle what was to be given, and then to exchange writings to that effect; the father of the bride should then give to the bridegroom one Rupee and a cocoa nut, and distribute Gool to the persons present. The Bride's Father must eat Kunsar (wheat cooked with Gool or Molasses) at the Bridegroom's house, and the marriage was then firm. A marriage contract thus settled, and in which money had been given, could not be dissolved on account of the

refusal

refusal of the one party to fulfil it, unless it were also agreed to by the Bridegroom, and a Release were passed by him. The marriage so celebrated could not be dissolved merely for the pleasure of the Bride's father. Marriages were generally settled in writing in their Cast, but they were also made by word of mouth.

Five others agreed generally with the foregoing, but declared that until the marriage was actually celebrated either party was at liberty to recede from the previous contract, and that there were many instances of their being so broken, which they could name.

The Court called upon the Komashdar of the district to send in four other Sonees to enable it to ascertain which party was correct on this point, of the legality of dissolving a contract of marriage. When examined, their testimony fully agreed with that given by the five Sonees, that dissolution of the contract was permitted by the Rules of the Cast, when either party was unwilling to fulfil it, but the father of the Bride must in that case restore whatever he might have received from the Bridegroom.

The Court thereupon threw out Appellant's claim for damages for breach of the Mungnee, but decreeing to him from Respondent the sum of Rupees 101, which it was proved had been paid to the latter, Appellant bearing Costs of Suit.

Decree 16th August 1822.

The Appellant pleaded in Appeal, that the custom of the Cast really did not permit dissolution of contract, but that the contrary had been proved in the Zilla Court, owing to enmity which several of the witnesses entertained against him.

Sudur Udalut, *Sitting Judge.* J. Sutherland, *Second Judge.*

The Sitting Judge could not say from the evidence adduced in the Zilla Court what was the established custom of the Cast in regard to the point at issue. The best proof would be made by pointing out particular instances where breaches of contract had taken place within the period of prescription, in which

should

should Respondent fail, the Register's decree must be reversed.

A precept was issued to the Judge of Kaira to take such evidence as Respondent might adduce of the existence of such a custom, and to give Appellant the same opportunity of setting it aside by other.

Four witnesses deposed that no marriage contract could properly be broken, unless the Bridegroom agreed to it, and the only instance known was one in which the Bridegroom named Nursing was unable to pay the Dowry agreed upon, and declined fulfilling his agreement. Nursing was himself one of these. Five others declared for Respondent, that a Mungnee might be broken at the pleasure of either party. They gave an instance which occurred only the year before, between the son of an Ahmudabad Sonee named Moogut and the daughter of Bhugwan Asaram, one of the five who now in Court admitted that it was broken off on the part of the Bridegroom; he himself adduced another instance of a marriage being broken off, but it was that of Nursing above named, though the witness said it was broken off by the bride's brother and not by Nursing; a third instance was said to have occurred about 40 years before. Two of them said the custom of the Broach Sonees was different from those of Dakor and Thasura, but they admitted that intermarriages between those places occurred.

The Sitting Judge held that Respondent had by no means urged satisfactory reasons for his conduct, and considering the nature of the institution in this country it would be too much to affirm the Register's Decree, even if the Cast rules clearly admitted of the annulling of marriage contracts unless good cause existed for breach of it, as it was no satisfaction to Appellant barely to restore him to the condition he was in before the Mungnee. The Suit was referred to a full Court for reversal of the Register's Decision, and for holding Respondent to his original agreement.

The

The Court reversed the Register's Decree, and adjudged that Respondent should proceed according to contract, to marry his daughter Muhakoonwur to Appellant, the latter performing all the conditions to which he might be subject under it, and that Respondent in failure of fulfilling his part of it, within six months, should pay to Appellant the sum sued for, Rupees 800, Respondent now paying all Costs, except those incurred by Appellant at Kaira under the reference from the Sudur Udalut.

Competent Court,
J. Romér, *Chief Judge.*
E. Ironside, *Third Judge.*
Decree 17th July 1823.

N°. 93.

BRIJBHOOKUN and MOHUNDAS, Sons of MEETHALAL ..... *Appellants,*

VERSUS

LALA and PRUMANUND, Heirs of NANA BHAEE RUSEEK, and after death of PRUMANUND, his Heirs ..... *Respondents.*

THE suit was filed by Appellants, to recover from Respondents the sum of Rupees 700, principal, and Rupees 99, interest, due by them on an account under their handwriting of the year A. S. 1877.

Broach Udalut.
R. Boyd, *Register.*

Respondents, without denying the claim to have existed, entered into an explanation of it, observing that of the original claim of Rupees 1900, part had been settled by a transfer of certain proprietary rights in certain mortgages amounting to Rupees 1,200 under a regular power of attorney passed to Appellants. A transfer had been made of their credits with various persons to the extent of about Rupees 400 more, and they pleaded ruin as a bar to the claim for interest.

Mokhtiyarnamu, or Power of Attorney, accepted by a Creditor from his debtor for the Collection of outstanding debts to a certain amount, held to be a complete acquittance for that amount of his claims against the debtor. But, of such assigned debts, sums privately col-

Appellants admitted the execution by Respondents of a power of attorney giving them, Appellants, rights in the mortgages, but

lected by the debtor, were decreed to the Criditor.

but they asserted this to be the full extent of power derived under it.

The power of attorney was as follows " We, Lala and " Prumanund Sons of Bhugwandas, and Heirs of the Firm " of Nana Bhaee Ruseek, bearing in mind the laws, declare to " this effect, that we, possessing full power so to do, have ap- " pointed Mohun Bhaee Meethalal on our part to demand and " collect from the undermentioned persons (named at foot of the " Deed) debts, due by them to the Firm under notes and re- " gistered Bonds, and accounts Current, either by persuasion, " or dunning or by action at law, in the Udalut of Broach " &c. in any way these said attorneys, acting for us, may " think fit, we declaring ourselves bound by their pleadings " and acts in the premises in our behalf, or by those of any " persons appointed by them in the same matter. They have " full powers to recover all our claims with interest from these " persons, the receipts going in liquidation of their claim upon " us of Rupees 1,914-0-0 until such claim has been satisfied. " They have in every respect our full consent and agreement " for every thing they do. This Mokhtiyarnamu is to have " full force and effect in all their disputes on this account.

" Dated 11th Rubee-ool-Uvvul 1237 or 7th December 1821."

The Court held the power of Attorney to show that the transfer of rights by Respondents to Appellants was made on account of a claim of Rupees nineteen hundred; and the terms of the power of Attorney were so imperative that under them the Court could not see that Appellants had any ground of action left whereon to rest the present suit. They had made the attempt to separate the item of Rupees seven hundred from the integral body of the claim for Rupees nineteen hundred, but the language of the law Document was so strong, clear, and pointed, that an absolute surrender by Respondents of all their rights and credits to Appellants in satisfaction of the whole claim of the Appellants was clearly deducible from it,

it, and thus Respondents would appear under the Provisions of that instrument legally fortified from Appellants' action; and although the signature of only one of the Appellants was affixed to it, yet such was the tenor of its general provisions that one of the Appellants could not, without authority of the other, have signed it, for it related not to personal but joint commercial claims of both Appellants against Respondents; and all doubt regarding the due execution of the power was removed by the unqualified admission of its validity signified in Court by both Appellants.

Appellants adduced evidence to shew that Respondents frustrated their operations under the power of Attorney, by preventing the realization by them of sums due on one of the mortgage Bonds made over to them by Respondents. The evidence however merely shewed that Respondents received Rupees 225-0-00 from a person whom Appellants prosecuted in the Civil Court on one of those mortgage Bonds, and that 175 Rupees due on the same account were paid by the same person to one Dhoollubhram Bhuwanee, who carried it to the credit of Respondents in his Books.

The rest of the evidence was clearly in proof of recoveries made by Appellants on the face of the Bonds and credits to them made over by Respondents, and it also went to shew a distinction between the lesser and greater items of account exhibited in Appellants' Books. The Court was not sufficiently satisfied of the legality of Appellants' claim to give them a Decree against the Respondents, first because the witnesses on both sides proved recoveries made by Appellants on the face of credits to them made over by Respondents, secondly, because although the evidence on both sides separated the greater and the lesser items of account, yet the power of Attorney consolidated the two; thirdly, because the language of the Appellants' other suit read during the trial proved that whatever might now be their estimation of the bargain made by them with

with Respondents originally, the Appellants were in the first instance fully satisfied of its value; and lastly because no misconceptions or inconsistencies of Individuals could alter the imperative nature of law Documents duly executed and delivered; the Court therefore determined to enforce in this instance a punctual compliance with the terms of the instrument in these Pleadings recorded, and Appellants' suit was dismissed with Costs.

Decree 9th July 1822.

Sudur Dewanee Adalut, Sitting Judge. J. Romer, Chief Judge.

The Sitting Judge agreed generally in the view taken by the lower Court, that the execution of the Mokhtiyar namu, for a special amount of debt due by the Respondents to the Appellants, was of the nature of a bargain which must be binding upon both. It was also to be inferred, both from the Appellants' acts and from what had appeared on the other suit, in which they were Plaintiffs, that at the time of accepting the Power of Attorney they were satisfied with the transaction. But it had likewise come out in evidence, that the Respondent had diverted to their own use, one or two sums of money which under the conditions of the Power of Attorney, ought to have been paid to the Appellants, and had excused to a third Rupees 25 of the full amount of his debt. The opinion of the Sitting Judge, was that Respondents should now be obliged to pay to the Appellants the amount of these sums Rupees 218, leaving the outstanding Items to be recovered by the latter from the other debtors, as provided for in the Power of Attorney. It was also his opinion that they were responsible to the Appellants for every facility being afforded within their power, to secure to the Appellants the means of proving the Debts due by the persons transferred to the Appellants' Interest by the power of Attorney, and that any attempt at collusion with such debtors by the Respondents, for the purpose of defeating the Appellants' claims, must render them liable for so much of the amount as might be lost to the Appellants by any such act or acts.

The above opinion going to amend the Zilla Register's Decree,

Decree, the cause was for that reason referred to a competent Court.

Competent Court,
J. Sutherland,
Second Judge.
E Ironside,
Third Judge.
Decree 8th May 1823.

The Sudur Udalut, in conformity with this opinion, amended the decision of the Register at Broach by adjudging to Appellants those sums of money which under the conditions of the Power of Attorney ought to have been paid to them and were diverted by Respondents to their own use, total Rupees 218, together with interest from the dates of payment to be ascertained in the Zilla Court of Broach. And holding Respondents liable for every assistance in the recovery of the rest.

N°. 94

NARAYUN BHAEE KHOOSHALBHAEE... APPELLANT,

VERSUS

BOOLAKLEE LUKMEECHUND.....RESPONDENT.

Ahmudabad Udalut,
D. Greenhill,
Register.

APPELLANT was plaintiff in the Ahmudabad Court, suing for recovery of a house valued at Rupees 601 taken away from Appellant on Respondent's motion to the Court and given up to the latter.

Suit by Appellant for a house, put into his hands by a Punchayut but made over to Respondent by the Police Court.
Dismissed for want of a written award of Punchayut.
Sudur Udalut decreed in Appellant's favor, holding the acts of a Punchayut to be proof of

In the Plaint it was stated that his Father had two houses in Ahmudabad, but living at Surat allowed a person named Hurgovind to live in one, and Respondent's Grandfather in the other—About 22 years ago Respondent's father Lukmeechund being at Surat wished to purchase one of them, and Appellant sold him that in which he dwelt, leaving the other as before. About this house a dispute afterwards arose between Appellant and Respondent with two other persons. It was brought by Appellant into Court, and a Punchayut was agreed upon, by the decision of which the other two Defendants gave up the house to Appellant, and Farighkhuts being exchanged, Appellant filed

settlement, valid and binding against Respondent.

filed a Razeenamu in their favor.—A claim still remained against Respondent respecting Appellant's Effects in the house, but that was dismissed, and the house was left agreeably to the Award, in Appellant's possession. In the month of Posh or January 1822, Respondent, by a Report from him that a *Soorutee Bunyun* was interfering with his house, got an order to have it given to him. This was the origin of the present Action.

Respondent denied that Appellant possessed any right in the house, and pleaded Appellant's minority also as a bar to his Suing.

Appellant exhibited the Farighkhut passed to him on the 5th Kartik Vud A. S. 1878, or 14th November 1821, by Ghela Hurgovind and Nursee Bhugwan declaring that they had surrendered to Appellant the house for which his suit was then pending against them in the Court. It made no mention of the Punchayut.

Appellant having no written award of the Punchayut by which possession of the house was awarded to him, called upon the members of it to state what had been done by them in the matter. Three out of five declared upon Oath that they sat in the Punchayut, and that a Punchayutnamu or agreement to abide by their decision, was passed, but that the Punchayut never came to an end. Two of these however recognized their signatures as witnesses to the above Farighkhut.

The other two members of the Punchayut deposed on oath, that the Punchayut decided that the house should be given up to Appellant.

The Court declared that such men could not be depended on, and ruled that all proceedings out of Court were cancelled as far as regarded Respondent. In strictness, Appellant had no action under the Razeenamu he had filed in the first Suit, since it declared he had no further claim against the Defendants regarding the house, but as he had given it under an Idea that

two

two shares belonged to the other two Defendants in that suit, without supposing it would for ever exclude his claim, he might be allowed to prove his interest in it. He called two witnesses, but as he admitted on examination that Respondent's father had possession from A. S. 1858, a period of 20 years, whilst he had failed to prove any decided right to the house, his claim was dismissed with Costs.

Decree 3d August 1822.

The Sitting Judge remarked, that if the *acts* of a Punchayut were to be held more conclusive evidence than their *words* they certainly did come to a decision, for they put an end to so much of the dispute as related to the house, by putting Appellant into full and complete possession of it, and causing mutual acquittances to be passed between the parties. He did not therefore concur in opinion with the Register that the Punchayut came to no decision, but found on the contrary that they decided the matter of the possession of the house sued for in favor of Appellant, into whose possession it ought again to be put by a Decree confirming their award; for the subsequent dispossession by the Police Court, bore every appearance of an irregular Act.

Sudur Udalut,
Sitting Judge.
J. Romer,
Chief Judge.

The Court agreed in opinion with the Chief Judge, and decreed that Appellant should be restored to full and complete possession of the house of which he had been deprived by Respondent, who was to bear all Costs.

Competent Court,
J. Sutherland
Second Judge.
E. Ironside,
Third Judge.
Decree 31st May 1823.

No. 95.

N°. 95.

HURJEEVUN POONJIYA.....*APPELLANT*,

VERSUS

KESOOR SUGAL and others, BUNYUNS; with NURSING DEVAH and others, the Cast of LOHANAS, at the Village of NAIKA..... } *RESPONDENTS.*

Kaira Udalut, G. L. Elliot. *Register.*

THIS suit was filed by Appellant on the 31st August 1820 in the Kaira Udalut for Rupees 150, amount of established Fees due to him as Izaredar, or Farmer of the village from Government, to whom the Huq belonged.

Claim by the Farmer of a village for a Government Fee upon exports by the villagers. Dismissed for want of proof of existence of the Fee.

Appellant took the farm of the village in A. S. 1872 or A. D. 1816 and held it for five years. The fee was levied at the rate of one per cent upon every hundred Rupees' worth of Goods sold in the village, and Purchasers coming from other villages had to pay the fee upon taking home their purchases. Respondents were in the habits of supplying themselves with stock in the village and disposing of it again to persons coming from other places, taking a deduction from them for the amount of this Huq. They had however constantly refused to pay it to Appellant, or let him take it himself, for three years, during which he was constantly disputing with them, till A. S. 1875 when he complained to the Collector, who consulted the Patels of three Villages on the subject.—They had reported "that the Huq was to be levied by Government from "all persons who bought Goods in the Village and carried them "away," and the Appellant now prayed that this being the case the Court would award to him the sum of Rupees 150 the amount of the Huq for A. S. 1872, and if he got it he would afterwards sue for the remaining four years' Huqs.

Respondents declared that from the oldest times no such custom had existed, nor had they ever paid the Huq.

Appellant

Appellant declared that a similar Fee was levied over the whole Dholka Purgunna; that none but these persons thought of disputing it, and if a decision were given against him it would cause a general loss of it throughout the Purgunna.

No further proceedings were held, and as Appellant admitted he had no proof to offer of the Fee being justly due by the Respondents, his claim for it was dismissed with Costs.

Decree 28th Sept. 1824.

The Appellant's case was further dismissed in the Judge's Court on the same grounds.

Judge's Court in Appeal, J. D DeVitre, *Judge.* Decree 15th June 1822.

In Appeal before the Sudur Udalut he still rested his case on the same Pleadings, admitting he had no evidence whatever to bring in support of it.

Sudur Udalut, *Sitting Judge,* J. Romer, *Chief Judge.*

Respondents gave in on their part, "A Decree passed by "the Sudur Umeen of the Kaira Court on the 28th Novem- "ber 1816, against Appellant for stopping some grain belong- "ing to Gungadas Deochund, then plaintiff, under pretence "of his not having paid the Huq now in dispute. The per- "son who held the Farm of the Village in A. S. 1869, 70, and "71, had deposed in this cause that he in the first year began to "collect this Huq but on complaint to the Collector was forbid- "den (*to establish any new tax,*) and in consequence he never "took it.—Appellant was therefore adjudged in this instance to "pay the damage which the Plaintiff had suffered by his un- "just claim."

The Sudur Udalut dismissed the Appeal and affirmed the decisions of the lower Court, because Appellant was unable to shew any ground by warrant of competent Authority, usage, or custom, for taking the Fee sued for, which had likewise been disallowed by Judicial decision against him. *Full Costs* to be borne by him.

Decree 26th March 1823.

No. 96.

N°. 96.

Mrs. E. HUMRUS, ... *Appellant*,

versus

Mr. J. HUMRUS, ... *Respondent*.

Surat Udalut, G. W. Anderson, *Judge*.

Appellant sued to oblige Respondent, her husband, to pay the sum of Rupees 45,000, amount of debts incurred by her during a separation of 30 years, for maintenance during that time at Rupees 125 per mensem, and to oblige him to allow her a future maintenance.

Claim by an Armenian woman against her husband for a future maintenance and payment of debts contracted during her former separation.

Future maintenance decreed, but payment of debts not awarded, against the husband.

It appears that Respondent entered the counting-house of Mr. Henry Humphrys, an English Merchant at Constantinople and Agent for the Honorable E. I. Company at that City, in the year 1781. In 1787 he maried Appellant, and in 1790 left the service of Mr. Humphrys and went on a trading voyage to Egypt, at which time the parties separated, and have never since then lived together. Appellant several times applied to Respondent to take her again into his family, and he had last year brought her from Constantinople, but their quarrels soon recommenced and brought on the present action.

The claim was contested by Respondent on the grounds, that the Appellant left his house against his consent; that considering his circumstances at the time and since, she was in nowise justified in spending at the rate of Rupees 125 per month, and that it was impossible such debts could be real, as no one would advance her money knowing their circumstances; that to prove them fictitious he had in his possession a petition presented by her on the 28th April 1806, to the English Ambassador at Constantinople, in which she, among other things, prayed his Excellency to oblige him to pay her 10,000 Piastres, or Rupees 5,000 as debts incurred by her during the 17 years of their separation which had then elapsed, from which it was clear that in the

ensuing

ensuing 13 years her maintenance ought not, and could not, have cost her the balance of her claim, Rupees 40,000. Lastly, that having separated, he was not bound to maintain her at all.

The Court conceived it essential first to determine by what law the case was to be tried.

The parties stated themselves to be of the Armenian Church, and to have been married according to its Rites.

The Armenian Archdeacon, then in Surat, was called up, and having been sworn upon the Holy Gospels, deposed, that "he had been in Constantinople. Marriages among Armenians there, were performed according to the Rites of the Armenian Church. The Armenians were divided into two "sects, one acknowledging the pope, and called Catholic, "the other called Meapan, who did not acknowledge him. "The Rites of marriage were the same in both Sects. Armenians of the Catholic Sect cannot be married, baptized, "and buried, by Priests of the other Sect. Divorce existed "among the Armenians in Constantinople. When a Woman commits adultery a Divorce could be obtained under "the Moohummudan Law from the Qazee, the Armenian "Priests being sometimes consulted, and signing the Deed of "Divorce. Divorce could also be obtained in other places for "adultery, and separation effected with consent of both parties "when incompatibility of temper existed, and in that case a maintenance was to be allowed. The Archbishop would grant the "Divorce. If a Divorce for adultery were claimed at Surat, "by a party from Ispahan, the Archbishop of that place "would grant it. If they were from Constantinople, then it "would be settled by Moohummudan Law. In case of desertion in a Moohummudan country, the Husband would be "obliged to maintain the wife according to the Moohummudan Law. *If among Armenians, where they referred to their "own law alone, the wife would be entitled to maintenance for*

"*five*

" *five years, because it was to be supposed that the wife ere that* " *would return to her Husband.* If the wife were disobedient " and did not seek her husband, he would not be bound to " maintain her. The maintenance to be given when separa- " tion was mutual, must be regulated by the Custom of the " country in which it took place, and the husband's ability at " the time, but it would only be awarded sufficient for the " maintenance of a single person. Witness admitted that he " spoke from recollection and had no law Books to refer to, " and had seen none for six or seven years. He thought the " husband responsible for his wife's maintenance if he turned " her out of doors. This applied to all Armenians. It was custom- " ary to give Dower according to ability, but if none were given, " maintenance on separation would not be enhanced beyond what " was necessary for a simple maintenance. Knew no instance " where so little was given. The case of Gregory Johannes, " which was in the Recorder's Court, was one of separation, " not of Divorce, and no maintenance was awarded because " he took an oath to his being a Pauper. He had a son by his " wife. Witness could not tell whether she brought any dower. " Knew two other instances of separation in places subject to " Constantinople, but could not say whether maintenance was " allowed. The parties in this case when in Constantinople at- " tended the Church to which witness belonged. In Surat " they went indifferently to either. Never had administered " the Sacrament to Respondent. The Sect of Respondent might " be married in whichever Church they pleased. The laws of " the two Sects were different. Respondent's Divorce, if per- " formed at Constantinople according to the Custom of that " place, would hold good. Could not say whether Appellant's " claim for maintenance would remain if Respondent had given " her property in lieu. The Armenians of Surat would not " acknowledge the Qazee's authority in their affairs, because " the present Government was Christian. The Qazee here " could not grant an Armenian a Writing of Divorce, as such

" would

" would neither be admissible, nor binding. A Divorce given in " Constantinople must remain good because *what has been de-* " *cided and done is not to be undone.*"

The Court here gave time for the parties to come to an amicable adjustment. This failing, the cause was brought on for trial, when the Court observed, that the evidence of the Archdeacon was so much against what would reasonably be conceived to be the right of a Christian wife, that some suspicion might be entertained of the partiality of the witness. Nevertheless, custom and law might be as he had stated it, the intention and object of its harshness being to keep the wife in subjection, in conformity with the prejudice of all Oriental people. It was therefore also held that Appellant could not recover the arrears she sued for, laid at Rupees 45,000, but that she was entitled to a future maintenance so long as she remained in separation from Respondent. To fix however the exact amount of the Alimony to which Appellant was entitled, would be difficult.—In a conversation which then ensued with Respondent, he agreed with the Court to allow the monthly sum of Rupees 40, provided the Appellant continued to live separate from him. It was therefore decreed, that whilst Respondent continued in separation from Appellant his Wife, he should allow her Rupees 40 per mensem, to be paid either to her, or to any agent she might appoint, she or her agent passing receipts for the same. Arrears of such allowance to be paid from the day on which the suit was filed, amounting to Rupees 472-0-66.

Under the provisions of Section 10th of Regulation 1st of A. D. 1816, it was further decreed that Respondent should pay one third of Appellant's pleader's regulated fees and one half of the fees of his own pleader, each bearing the expense of their own stamped paper.

Decree 25th July 1822.

Sudur Udalut, *Sitting Judge.* J. Romer, *Chief Judge.*

Appellant was dissatisfied with this decision, because the amount of the monthly allowance was not adequate to her monthly expenses, which amounted with house Rent &c. &c. to Rupees

pees 125, three times as much as her Receipts would be; neither was this allowance at all proportioned to Respondent's Income which was Rupees 500 per mensem, as Head Clerk at the Custom House, besides the Interest of his private Fortune, which was at least 1,50,000 Rupees. She therefore prayed the Sudur Udalut, taking these facts into consideration, to fix her allowance at Rupees 125 per month instead of Rupees 40, and to stop the amount monthly from Respondent's pay before its issue from the Treasury. She wished to make him pay up Arrears at that rate from the day when he turned her out of his house in Surat till date of the Sudur Udalut's decree. She preferred the Appeal for Rupees 16,000.

Respondent pleaded, that Appellant had already got far more than she would have received in her own Country, either by the Moohummudan or Armenian Law, when Rupees 40 were awarded to her much against his will; that instead of being entitled to more, she had even forfeited her claim to the present allowance by refusing to receive what the Court had awarded. The Sitting Judge agreed in opinion with the Zilla Judge that it was difficult under the circumstances of the case, to fix what sum should be considered as a suitable maintenance for Appellant during her separation from Respondent, who in admitting that he was in the receipt of monthly allowances from Government amounting to Rupees 500 per month, said they would cease with the period of his services; but omitted to add what was perfectly well known, that Government had agreed to give him a pension of Rupees 300 per mensem whenever he chose to retire. The manner in which Appellant had left his house since her first coming to reside with him at Surat was not clearly stated by Respondent, for without directly accusing her of quitting him clandestinely, and refusing to return, he insinuated as much. It appeared however to have been his Act which prevented her return to his house, and threw upon her the necessity of maintaining herself, and it was no where said that Respondent had invited her to return, or taken any steps to supply her with the

mean

means of subsistence after this door was shut against her.—Upon an equitable view of the case, the Judgment of the Surat Court might be amended to the extent of fixing the Alimony, with reference to Respondent's means, at something more than had been allowed,—and the Sitting Judge referred the case to a Competent Court, with his opinion that it should be raised to Rupees 60 per month from the day of Appellant's being excluded from her husband's house on the 25th February 1821.

Competent Court, J. Sutherland, *Second Judge.* E. Ironside, *Third Judge.*

The Court, having neither peculiar custom nor precedent for its guide in judging what might be a suitable maintenance for Appellant, and being thus left to its discretion, was inclined to fix upon a medium between that determined on by the Zilla Judge in the first instance, and that by the Chief Judge who sat on this case. The Zilla Court's Decree was therefore so far amended as to fix Rupees 50 per mensem instead of Rupees 40 payable from the 25th February 1821, which both parties allowed to be the date on which Appellant began to live apart from her husband after her arrival at Surat.

No. 261.

Connected with this Report, was the Appeal of Respondent to obtain relief from the provisions of the Zilla Judge's Decree respecting payment of Costs. The Zilla Judge's Decree having been above affirmed in all points, with the exception of the amount to be allowed for maintenance, the point of Costs was considered to be at rest, and this Appeal was dismissed on the same date.

N°. 97.

KASEERAM KRIPARAM, His daughter-in-law Mt. LUKMEE, and MANKOONWUR, Widow of UMROOTRAM..... } APPELLANTS,

VERSUS

Mt. ICHHA, and SHEO, daughters of SHUMBHOORAM DUYARAM..... } RESPONDENTS.

Surat Udalut, J. Vibart. *Register.*

THIS cause was filed in the Zilla Court of Surat on the 28th December 1821 by Appellants for Rupees 650, amount of property descending to them from Kaseeram's son Nurbheram on whom it was bestowed by a Deed of Krishnarpun, or Religious Gift, by Shumbhooram Duyaram the father of Respondents. Nurbheram, the Donee, was said in the plaint to have obtained actual possession of the property on the death of the Donor, under the Krishnarpun, and to have kept it till his death, when his wife Sheokoonwur succeeded to possession, but dying lately, Respondents had taken it, which obliged Appellants to sue in order to prove their right to succeed Sheokoonwur as next Heirs of the Donee.

Claim by the natural father of a boy (Donee under a Krishnarpun from his maternal Grandfather) to succeed to the Donor's Estate on death of his son the Donee.
Disputed by the Donor's daughters on plea that the Estate, on death of the Donee without issue, must revert to the Donor's family.
Zilla Court dismissed the Claim considering the Krishnarpun invalid, but the Decree was reversed in Appellant's favor by the Sudur Udalut.

The Respondents answered separately. Ichha on her part clearly admitting that her father had executed and registered the Krishnarpun in favor of Nurbheram, and that it had descended, as stated in the plaint, to Sheokoonwur. She declared that on Sheokoonwur's death the Effects had been inventoried and deposited with a third person, but supposed that the whole estate belonged of right to herself and Sister as reverting by law, after death of the Donee, to the family of the Donor, failing Heirs male of the body of the Donee. She left it to the Court to decide whether it were so or not.

Respondent Sheo accused Ichha of having joined with the Appellants in raising this demand. She pleaded that her father Shumbhooram had no son; that when a man had no son of his own, he was permitted by the Hindoo law to take the

son

son of one of his relations into his house in place of a son, but even if he should pass a writing to the effect under his own hand, the property nevertheless would not go after the death without male issue of such adopted son, to the natural Father or natural relations of the adopted son, but become the inheritance of the natural Heirs of the adopting Father who in this case were the daughters, herself and Sister. Now Nurbheram was the son of Shumbhooram's daughter, and was by Shumbhooram fixed upon to be Heir to him. The practice was common in Goojurat, where it would be found that the custom held as she had stated it. The Krishnarpun was illegal in as much as it destroyed the rights of several in favor of one, and she referred the Court to a late case decided in the Court of Appeal favorable to her side of the question. A Deed of Krishnarpun, to be valid, required that the Donor should at the very time of passing it divest himself of the property given, and that the Donee should at the same time take possession of it, which it would be seen from Appellant's account was not the case. From all which she maintained that the claim was not valid.

Appellants replied, that Nurbheram had entered on the property to all intents and purposes so as to render the Krishnarpun valid, as much as depended on obtaining possession, whilst execution of it by Shumbhooram was distinctly admitted by Respondents.

Rejoinder was filed by Sheo alone, who pleaded that Appellants had not succeeded in getting possession of the property, and their claim under the Krishnarpun was still weak, and with the other objection she had taken against it, the Krishnarpun must fall.

The Krishnarpun which was dated 19th Shuwal 1235, or 30th July 1820, registered on the 7th August, was as follows. "The cause of writing is this, that I, Shumbhooram Son of "Duyaram, Son of Ruveedut Brahmun, Mewara Bhut, inhabitant

" bitant of Surat, do lawfully and solemnly declare, after this " manner, that I am weak, and for that reason, being in life " and in possession of my faculties, have of my own free " will made a Krishnarpun of my effects, and a Gift, and Pre- " sent of them." (Here follows a description of the House and premises, which the Donor declared had come to him by inheritance from his Father, valued at Rupees 250 with other property Rupees 100, and ornaments Rupees 100 more, total Rupees 500.) "Now at the time of making this Krishnarpun, the " house is free from the claim of any one, and it, with the " above effects, total value Rupees 500, *I give in Krishnarpun,* " *and have presented, to Nurbheram alias Bhana Bhut, son of* " *Kaseeram son of Kriparam with the ceremony of taking up* " *water and Toolsee leaves.* He is the son of my daughter. " *I, Nurbheram abovenamed, do declare, that I have received* " *the house and effects enumerated, from Shumbhooram my* " *Maternal Grandfather, in Krishnarpun, and have accepted* " *them. I Shumbhooram do declare that the above enumerat-* " *ed property I have with my own hands, given up and bestow-* " *ed upon Nurbheram.* After this, if I or one of my house, " should hereafter claim this property, such claim is altogether " null and void. Wherefore I have in the above terms written " out a Krishnarpun and Gift, so that it may be made use of. I " have also given up to him the original Deeds of the house." No mention was made of the Respondents, his daughters, or of his having any or none other relations in existence.

The copy exhibited was obtained from the Registry Book, Appellant having lost the original which he pleaded was of no consequence, as Respondents admitted execution of the Krishnarpun.

The Court at the desire of Respondent then brought upon record the proceedings of the Court of Appeal in the case alluded to by Respondent Sheo in her answer. A full report of it accompanies the case.

Appellants

Appellants called five witnesses. Two of them, named in the Krishnarpun as the subscribing witnesses, proved it's execution and delivery to Nurbheram by Shumbhooram, who, they added, in his own house invested Nurbheram with the Brahminical thread and celebrated his marriage. Shumbhooram's funeral ceremonies were performed by Nurbheram, who from the date of the Krishnarpun resided in the same house with Shumbhooram, that in dispute.

The other witnesses agreed with them, further stating that Respondent Sheo had a son living, and that the funeral of Nurbheram's widow was celebrated in the house of Appellant.

Respondent called several witnesses, who deposed that Nurbheram, from the time he was five years old, always lived united with Shumbhooram in the house in dispute which was bestowed in Krishnarpun upon him by the latter, whose funeral ceremonies he performed, giving alms on the occasion *to his own Father, Appellant.* Both the Respondents and the son of Sheo had resided at Broach since their father's death. Nurbheram's funeral was celebrated by his Widow, who before her own death sent for Sheo and desired her to make out an inventory, and at her desire Sheo took charge of the Effects. Shumbhooram was a Nyat Guor, or Cast Priest. Respondent Ichha received from Nurbheram's Widow during her life time, whatever had been allotted to her by Nurbheram, and Sheo succeeded to the rest.

Respondent Sheo gave in the inventory which shewed the property left by Nurbheram's widow at her death, but it was neither signed nor witnessed.

The Court asked the Shastrees, stating all the circumstances of the case, whether Appellants, the natural Father and Sisters of Nurbheram, adopted son of Shumbhooram, or Respondents, the daughters of Shumbhooram, would succeed to the Estate of Shumbhooram?

They

They observed in answer, that the deceased Shumbhooram, having two daughters living, gave all his property to the Son of his third daughter deceased, in Krishnarpun, and drew out a deed of Gift; that without a bonâ fide Krishnarpun, as Respondents, his two daughters, were his next Heirs, he could not give his property in the first instance to the Heir next only in reversion after them, and leave them out. But he had full Power to make a Krishnarpun, and the Grandson in this case being a competent Donee (Dan Patru) he could execute a Krishnarpun in his favor, though it was most proper that he should do it with the consent and concurrence of his two daughters, giving them also something. The next Rule in the Shastr respecting Krishnarpun, was, that the Donor should have no enjoyment or possession of the property so given away. (1) But Shumbhooram, as long as he lived, kept possession of the property and kept up his own rights as Master of it until his death, and when he died his funeral ceremonies were defrayed from his property, from which it appeared that the Krishnarpun was not valid. Wherefore, by the law of the Shastr, the two daughters of the deceased inherited all the property as lawful Heirs to Shumbhooram. The Grandson was Heir in succession to them, and the Offices required by their Yujmans from them as Nyat Guor, must be performed for them by him, because he was the next descendant in the female line from their common Ancestor. From the enjoyment of the property in dispute by Shumbhooram, and from the receipt by Nurbheram's father of Dan &c. from this son, the Term Krishnarpun would not hold good in this case, for if it possessed the smallest relation to Krishnarpun how could the son give, or the father receive, Dan? (meaning to say that he could

(1) Mit. Book second, leaf 14th, page second, line 8th, "The meaning is this; Gift is "the resigning by one of his right of ownership, and the accession of it to another; and "accession of ownership to another takes place when that other makes the thing his own; "not otherwise. Acquisition is of three kinds, mental, verbal, and personal: mental is a "fixed idea that this property is one's own, verbal, when a well weighed and confident de-"claration is made that it is one's own, or as the case may be. Personal, again, requires "seizing, imposing of hands, and other acts of many kinds."

could not give "Dan" or "Alms" from property to which he had succeeded, to his own father, but might do so if he were only acting for the daughters in performing their father's Sraddh, and not in his own right as Donee.) The whole property descended in equal shares to the two daughters of the deceased, who must carry on the duties of their Office through the Grandson. As Nurbheram was deceased, neither his father nor his Sister nor the Widow of the brother (the Appellants in this case) retained any claim to the Estate of the Grandfather Shumbhooram.

The Court found, that Shumbhooram lived in the house in dispute to the day of his death, and that Nurbheram discharged the whole of the usual funeral rites for him, performing them in this house; that Appellant Kaseeram received from Nurbheram on the occasion certain Gifts, which he could not have done had not Nurbheram been adopted by Shumbhooram; that Shumbhooram adopted his Grandson, and invested him also with the Brahminical string and got him married; that his, Nurbheram's, funeral ceremonies were performed by his own widow in his own house, and not by Appellant Kaseeram, and that his Widow's funeral was performed by Respondent Sheo, as well as by Appellant in his house. As the Shastrees had declared the Deed of Gift not to be valid, and Appellants not entitled under the Shastr to the property sued for, their claim was dismissed with Costs.

Decree 26th July 1822.

Appellant Mankoonwur died before the Appeal came on for trial.

Sudur Udalut,
Sitting Judge.
J. Romer.
Chief Judge.

The Sitting Judge made the usual verbal reference to the Sitting Shastree, but finding that he was inclined to consider the Deed of Gift valid, the Law opinion in the present case, with those of the Appeal decided by the late Provincial Court, and the Deed of Gift, were delivered to both the Shastrees, the Sitting Judge desiring them to state fully their opinion on both the cases, shewing whether the answer of the Surat Zilla Shastrees was comformable to the Shastr, or if not, where it deviated? and

and in what points the case before the Court of Appeal agreed with or differed from, the present Appeal?

Their answer was as follows. " We think the Deed of Krish " narpun is agreeable to the Shastr; for therein the Donor writes, " I, taking water mixed with Toolsee flowers, have given this " Krishnarpun." The Donee likewise therein acknowledged " receipt of the property given by the Krishnarpun. A Krish- " narpun so executed was never yet set aside. The Donor, hav- " ing given to his Grandson a house and property worth Rupees " 500, lived for three months afterwards, and resided and ate in " that same house; but the Krishnarpun need not be held null " by his so doing, for since he did not thereby also resign his " heritable Office over his Yujmans, it must be supposed that he " supported himself by the Income derived from that Office, " without continuing of necessity to enjoy any of the property " given away by Krishnarpun. The Donor died three months " after the act, but his funeral Ceremonies were not defrayed " from the property given away by him in Charity or Krishnar- " pun, because it is ascertained from the Respondents, that " these funeral expenses were paid from other property of Shum- " bhooram. From all which we pronounce the Krishnarpun " of Shumbhooram in favor of his Grandson to be without " doubt valid. Again, the Donee took possession of the pro- " perty and retained it during the rest of his life. After his " death, it came into the hands of his Widow, including the house " and every thing. After her death, if it were asked who was " Heir to what remained of the Krishnarpun, we would answer " according to the Mitakshura, which says " the property of " a Childless man deceased descends to his wife &c." that " the next Heir was Appellant, the father of the Donee. But " since the heritable Office was not assigned to the Donee un- " der the Krishnarpun, it, the Office, would fall to the next " Heir of Shumbhooram."

The

The Shastrees having examined the papers in the other Suit, declared the two cases to agree.

Respondents now urged, that Shumbhooram virtually, if not actually, adopted Nurbheram as his son, and if Nurbheram thus became the *adopted son of Shumbhooram,* it followed that he was also his Heir, and then the Deed of Gift was of no effect.

The Court held that the evidence only warranted the inference that Nurbheram was adopted by Shumbhooram. (2) The Respondents founded their conclusion upon the knowledge that Shumbhooram at his own expense performed for him the two ceremonies of investiture with the Brahminical thread, and marriage. These acts would only have the effect of a formal ceremony of adoption if accompanied by the performance of certain other ceremonies, which it did not appear had been performed in the present instance. The Sitting Judge thinking the Krishnarpun ought to be maintained, and the Register's Decree reversed, referred the case to a Competent Court.

Which concurring in the view taken by the Chief Judge, reversed the Register's decision, and adjudged the Krishnarpun to be a valid document, and that Respondents should place Appellants in possession of the house, and of the household property, valued in the Deed at Rupees 100, and of the ornaments value Rupees 150, Respondents also paying full Costs.

Competent Court, J. Sutherland, *Second Judge.* E. Ironside, *Third Judge.* Decree 24th July 1823.

Accompaniment, being the case alluded to in the foregoing Report, as decided by the late Court of Appeal.

MUHA

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(2) The adoption of a daughter's son is contrary to law, as regards Brahmuns. See the answers of the Poona Shastrees, at the end of No. 14.

MUHA LUKMEE, Widow of DUYASHUNKUR KRIPASHOOKUL..... } APPELLANT,

VERSUS

Three Grandsons of KRIPASHOOKUL by a daughter..... } RESPONDENTS.

Broach Udalut, T. Barnard, *Judge.*

Oudeech Brahmns, Dispute between the Widow of a Son, and the sons of a daughter, of a person deceased, whose Estate the Grandsons Claimed under a Krishnarpun, which the Court of Appeal set aside in favor of the Widow (or daughter-in-law.)

ON the 27th May 1816 Appellant filed her Suit in the Broach Court to recover from the Respondents the sum of Rupees 505, value of property left by her father-in-law Kripashookul, who died about two months before, and since that time Respondents had taken up their abode in his house, and possessed themselves of all his property, giving Appellant so much annoyance that she could not remain in the house. Appellant conceiving herself to be the legal Heiress of her late father-in-law, sued for recovery of the property to the value specified in the Plaint.

Respondents rested their defence on the fact of Kripashookul's having taken them into his house after the death of his own son, Appellant's late husband, and having executed a writing of Krishnarpun in their favor before his death, of all his property, reserving only to Appellant a room in the upper part of the house as long as she lived, and payment of her funeral charges by them.

Appellant pleaded that by the Custom of the Cast she was legal Heiress to the Estate of her Father-in-law, and that Respondents had no right to succeed him. She denied at the same time all knowledge of the writing they mentioned, which could not be valid unless executed with concurrence of herself, of the Cast, and of the neighbours, which it had not received.

The Deed of Krishnarpun was dated 3d Phalgoon Vud 1867 or 13th March 1811, and thereby Kripashookul gave to his Grandsons, the Respondents, a house, in Sree Krishnarpun to have

have as long as the moon should last, giving to Appellant, the Widow of Duyashunkur, the upper part of the house to live in during her life, Respondents succeeding to it after her death.—Two persons who were called as witnesses to the Deed swore to its execution by Kripashookul in their presence.

Appellant called two witnesses to prove that Kripashookul at his death gave certain ornaments into the hands of Respondent Rameshwur, telling him they would be of use afterwards.

The Court asked Appellant from whose Estate the house came. She answered, that it was acquired by Kripashookul. The Court therefore verbally asked the Shastrees, who would properly be Heir to Kripashookul? They answered, the son in the first instance. If he had no son, the widow would succeed, and after her, the daughter of Kripashookul, and after her, her sons, Respondents, since Appellant was not included among the Heirs.

The Court found from this that Appellant was not in the direct line of inheritance from her father-in-law, and Appellant not being Heiress to her father-in-law was incompetent to maintain the present action, which was therefore dismissed with Costs.

Decree 29th Oct. 1816.

Court of Appeal, G. L. Prender gast, *Chief Judge.* J. Sutherland, *Third Judge.*

The Provincial Court proposed to its Law Officers the question whether the Grandsons, (sons of the daughter) or daughter-in-law (widow of the son), of Kripashookul, who died without other Heirs, would succeed to his Estate?

They answered, that according to the Shastr, the widow of the son of the deceased was his Heir, (3) and after her, the Grandsons by the daughter.

They were again asked, whether the assignment by Kripashookul of his house in Krishnarpun to the Grandsons, to the exclusion of the daughter-in-law, was valid?

They

(3) The wife of a son is equal to a wife, as the son is equal to his father.

They answered that it was permitted to a person to give away in charity (Dhurm) his own property to his Grandson, (being son of a daughter) or to whomsoever he pleased, provided he made due provision for the residence and maintenance of his Son's widow.

They were again asked, in whose possession the house ought to remain?

To which they replied, in that of the Donee under the Krishnarpun, the validity of which was not injured or affected by his not taking possession.

The Court finding this Exposition to be at variance with the opinion recorded in the Zilla Judge's Decree, but not entered in writing on his Record, found it necessary to refer to the Zilla Shastrees the questions above proposed to the law Officers of the Provincial Court.

It was at the same time observed that the Deed itself was not proved, because the name of one of the two witnesses out of five who swore to his having attested the Deed, was not to be found mentioned in it, and only one other witness to the Deed had been examined.

The questions for the Law Officers were therefore forwarded to the Zilla Court, with directions to receive any evidence tendered by either party in proof of the Deed, or of the Custom of the Cast of Oudeech Brahmuns, upon which Appellant relied in her pleadings, or any other points.

The answer of the Broach Shastrees was as follows. In a case like the present, the Sons of the daughter are Heirs both to the real and personal property; the daughter-in-law of the deceased, being without an heir, has no title to it. As long as she lives the above Heirs must give to her a maintenance, and a place to live in, under the authority of Yagnyuwulkyu (quoted in Bombay Cases No. 37, "The Wife &c.") Again Jimootuvahunu in his Dayu Bhagu (Cole. Inh. 189) quoting Vrihusputee,

tee, "As the ownership of her father's wealth devolves on her, "although kindred exist, so her son likewise is acknowledged to "be heir to his maternal grandfather's Estate," says, that as the daughter is heiress of her father's wealth in right of the funeral oblation, which is to be presented by the daughter's son; so is the daughter's son owner of his maternal grandfather's Estate in right of offering that oblation, notwithstanding the existence of kindred such as the father, and others. Further on he quotes a verse of Munoo (Ch. 9th, v. 136) "Let the daugh- "ter's son take the whole estate of his own father who leaves no "other son; and let him offer two funeral oblations, one to his "own father, the other to his maternal grandfather. (4) Be- "tween a Son's son and the son of a daughter there is no diffe- "rence in law; since their father and mother both spring from "the body of the same man." (Munoo, Ch. 9, v. 133.)

The evidence handed up by the Zilla Judge in his return went to shew that other persons had been asked by Respondents after Kripashookul's death to sign the Krishnarpun, but refused, and one of them deposed that the Deed at that time bore no other signature.

Respondents again produced two of the remaining witnesses and the writer of the Deed, who deposed to its having been passed by Kripashookul himself. Appellant attempted to set aside their evidence by proving that one of them was to be paid by Respondent Umbaram for signing and proving the Krishnarpun, on the trial.

The Zilla Court here proposed to the Shastree the question, whether if any person give property in Alms to another, the property so given should remain in the possession of the Donor, or Donee?

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(4) Sir William Jones makes the giving of the funeral cake by the Heir to be the consequence of receipt of the Estate of his maternal Grandfather (or vice versâ) but Mr. Colebrooke holds it to apply to the Estate of the father.

Donee? and would the Gift remain valid, if the things remained with the Donor?

Their Answer was as follows.

Possession by the Donee in such case is not required, since the Donor's right is removed from the property; for thus says the Mitakshura (Book second, leaf 45th, page 2nd, line 10th) " For a Brahmun, that which is obtained by acceptance or the like is additional; (Udheek) not common to all the tribes. (Cole. Mitakshura 251;) therefore the Gift, whether of real or personal property, would remain valid, even if possession had not passed from the Donor to the Donee, who could nevertheless enter on possession whenever he pleased, since he had acquired a right in them, according to the Bruhut pareejat which says " If the Donor should not think upon what he has " given, and the Donee should not demand it, they both go " to Hell, the Giver, and also the Receiver."

Umbaram Duyaram, Patel of the Oudeech Brahmuns of Broach, stated that during the life of the Son's Widow, daughter's sons did not inherit their Grandfather's property but would succeed at her death; that unless the Son's widow signed the Deed whereby the Grandfather made over his house to the Grandson, such Deed was invalid; but that it had never happened in the Cast that a Krishnarpun was reversed.

Bhuwanee Shunkur Pundia, another Patel of the same Cast, gave exactly the same evidence, except that the son's widow's signature was not requisite to the validity of a Krishnarpun by her father-in-law to another person, of property acquired by himself alone.

The Court of Appeal having resumed the case on receipt of this evidence, reversed the Decree of the Zilla Judge, and decreed, that Appellant was Heiress of the late Kripashookul, her Father-in-law, and should be put in possession of the house sued for,

for, and all such other property, wheresover to be found, as was possessed by the deceased. Respondents bearing all her Costs. Decree 29th July 1817.

In consequence of a Petition from Appellant respecting the execution of her Decree, the Court of Appeal called on the Zilla Judge to report proceedings; from his return it appeared that Respondent Umbaram, then in Jail, was held responsible for restoration of the house and other effects of the Estate, which he had mortgaged, and that the Decree of the Court of Appeal, as far as it related to things specified, was in course of execution.

The Judge in making this return requested information whether Process could be issued to compel delivery of the unspecified property in general, until proof were given that they were the identical things belonging to Kripashookul, and that they had not been legally alienated; and whether the present possessors were not also to be allowed to defend their title, as the Judge conceived the prayer of Appellant's petition to be "for authority to search for and appropriate any property she "chose without distinction."

The Court of Appeal declared that Appellant was at liberty to attach, under the Decree of their Court, whatever property she might point out, such attachment being at her own risk, leaving the persons in whose possession it might be to bring an action in the Civil Court for removal of the attachment. This Principle was declared to hold in all executions wherein application was made for an attachment.

The Zilla Judge having applied to know whether a Search Warrant might be granted to Appellant, the Court gave its opinion that a Search Warrant could not be granted in Civil Process, but it was not considered objectionable that property should be attached in presence of a Civil Officer under the Judge's instructions, when pointed out by the party claiming the same, at his risk.

No. 98.

N°. 98.

PARVUTEE, daughter of HUREE WUSEE DESAEE, with KHUNDOO, her husband, and KULOO, and other Heirs of MUKUNJEE MOOTA..... } *APPELLANTS,*

VERSUS

SOORUJ, Widow of MUYARAM KEVULRAM, alias LALA DESSAEE, and after her death OOMALUKSHUMEE her daughter..... } *RESPONDENT.*

Surat Udalut, G. W. Anderson, *Judge.*

Suit by Respondent to redeem from mortgage the Desaeeguree of great Burachee, Purgunna Oolpar. Pleaded by some of the Appellants that a mortgage never had existence, by others that it had foreclosed. Right of Redemption decreed to Respondent.

THIS suit was filed by Respondent Sooruj, on the 15th July 1819, in the first instance against Appellant Kuloo and other Heirs of Mukunjee Moota, and Jugdish and other Heirs of Wusunjee Jeevunjee, to oblige them to resign the Desaeeguree of the Village of Great Burachee in the Oolpar Purgunna, mortgaged in A. S. 1802 by her father-in-law Kevulram, the then Dessaee, to Mukunjee Moota Mookuddum of that Village, and Wusunjee Jeevunjee, Mookuddum of Puriow, for Rupees 1,101, which sum she now tendered for redemption of the mortgage, adding that the Mortgagee's having remortgaged it ought to form no bar to her claim for its restoration.

Respondents denied all knowledge of her possessing any right to the office, which was their own, adding that if the claim were true, the lapse of seventy five years since the transaction, must prevent Respondent from recovering through the Court, and it was impossible that the Office, the annual receipts from which amounted to Rupees 250, could have been mortgaged for the small sum of Rupees 1,101.

Appellant Parvutee was subsequently included as a Defendant in the suit, because Wusunjee Jeevunjee's half of the Desaeeguree was in the hands of the heirs of Huree Wusee; she pleaded when called on for her defence, that Respondent's Ancestors mortgaged this Office to those of Appellant, for Rupees

pees 2,500, but having fixed a term for redemption, which had expired, the mortgage had foreclosed; and that Respondent had once before raised a claim for the Office in Chintamun Huree Sur Soobedar's time, but it was given against her.

Respondent exhibited two orders dated 23d Suffur Sittu Summaneen, A. D. 1786, under the Seal of Madhow Rao Narayun Peshwa, setting forth " that Muyaram Lala had " complained that the Patels of Puriow and Burachee had ad- " vanced Rupees 1101 about 40 years before, and had receiv- " ed in mortgage his Deshmookhee and Muzmooadaree Huqs " in Burachee, but now refused to surrender them though the " complainant had cleared off the encumbrance;" the order was granted to oblige them respectively to restore the Bonds as paid off and settled.

The Court called on Moohummud Aruf, the Karbaree of Huree Wusee Dessaee, to produce the Dessaee's Books for the last fifty years, that the Court might be certain of the right being in the hands of Huree Wusee or of his family. He declared that there were no Dufturs in existence, but produced a Deed, purporting to be a mortgage Bond, dated 6th Posh Sood A. S. 1801 passed by Kevulram Muyashunkur to Siooram Soondurjee Wusee (Father of Huree Wusee) and Patel Mukun Moota, as a mortgage to them of his Dessaeeguree in Burachee for Rupees 2,501 to be charged with interest at 12 per Cent, the produce going to liquidate the interest account, and the mortgage to be redeemed within five years, in default of which he, the mortgager, was to lose all claim to the Wuttun for ever.

The Appellants fully admitted this Deed. Respondent however distinctly denied it, and declared it to be a forgery.

The Court observed, that whether it were or not, it shewed that the Dessaeeguree did originally belong to Muyashunkur the Grandfather of Respondent's late husband, and that it came

to

to Appellant's Ancestors by mortgage, as the Appellants had conceded in admitting the Bond.

Among other witnesses Roopshunkur Shunkurjee, the Karkoon of Poorun Bhudur Jageerdar of Burachee, deposed that Lala Bhaee Muyashunkur, Respondent's Father-in-law, formerly held the Desaeeguree, which was mortgaged by him for Rupees 1101 to the Patels of Burachee and Puriow, the latter of whom when in distress remortgaged his half to Huree Bhaee Wusee, father of Appellant. Huree Bhaee Wusee again mortgaged this half of the Dessaeeguree in the name of the owner of the village, Huree Bhudur Vijaee Bhudur, to Rughoonath his Agent. The witness gave in, copy of the mortgage Bond, being that of which Respondent claimed redemption; by it Lala Muyashunkur mortgaged his Dessaeeguree to the two Patels of Burachee and Puriow on the 13th Ashad Vud A. S. 1802 to be restored on repayment of Rupees 1101 advanced to him by them; also copy of the other Bond by which Huree Bhaee Wusee mortgaged the half Dessaeeguree which he held from the Patel of Puriow, to Rughoonath the agent of the Jageerdar. This transaction was further proved by the witness shewing in his Book the account Rupees 556, as repaid by Huree Bhaee Wusee when he redeemed the half Dessaeeguree in A. S. 1864.

Two witnesses were called to prove the decision of the Sur Soobedar, which they declared was against the claim of the Oolpar Dessaees, on the grounds that it was not then valid because the term of five years which had been fixed had expired.

The Court was struck with the difficulty and danger of disturbing a possession which had lasted for seventy five years, as admitted by the Respondent herself. It required that the right of the disturbing party should be clear and defined. This was not quite the case in this instance, but still Respondent's title was better made out than that of Appellants. It was clear that the Dessaeeguree in question was the property of Respondent's ancestors.

cestors. They mortgaged it, certainly, but whether with condition of Sale, would probably ever remain in doubt. Still it belonged to Appellants to prove the sale, more particularly since one of them denied the mortgage. They had produced a Bond purporting to be such Bond of mortgage with conditional Sale, but it was a fabrication as it bore no impression of having been executed seventy five years ago, but had the appearance of being intentionally rubbed to give it a look of antiquity, and from the evidence it appeared that Respondent's ancestors had never resigned their right to the Dessaeeguree but continually sought to recover it, which was inconsistent with the fact of Sale. The evidence in regard to the judgment of Chintamun Huree was not to be relied on; it was brought by the Heir of Huree Wusee Dessaee, and as the other Appellants were joint Sharers, they must have been acquainted with a decision so favorable to them as confirming their right and title; wherefore, as they had not pleaded it, it must be supposed never to have been given. And the law of mortgage was, that the mortgager could always recover his property on payment of the sum advanced. On these grounds a decision was passed that Respondent should be put in possession of the Dessaeeguree of Burachee as sued for on paying Rupees 1101 to Appellants, the Heirs of Mukun Mota, and the Heirs of Huree Wusee Dessaee, the above mentioned Appellants, bearing all Costs.

Decree 18th July 1822.

The Sitting Judge agreed with the Zilla Court in his view of the difficulties of the case, and of the suspicious evidence on both sides.

Sudur Udalet, *Sitting Judge*, J. Sutherland, *Second Judge*.

The Deed of conditional sale was evidently fabricated, but there was not much reliance to be placed on the papers on the other side. Leaving the evidence therefore in the back ground, the Sitting Judge thought from the facts of the case, that it was impossible such excellent property, secure in every way and fixed in its nature, should have been so long unredeemed if mortgaged for so small a sum, from which it must be believed that

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the Copies of Bonds produced for Respondent by Roopshunkur were spurious, and consequently her case must fall. The Sitting Judge referred the case to a Competent Court, being inclined to allow matters to rest as they were at the time of the institution of the Suit, without disturbing, on such inconclusive grounds, what had so long existed; for the long possession favored the supposition that there might be something more favorable to Appellants than was now perceptible, and it would be unfair to take their defence against them, whilst their title was so much involved in mystery.

Competent Court, J. Romer, *Chief Judge.* E. Ironside, *Third Judge.*

The Court observed, that the only proof of foreclosure of the mortgage lay in the Deed produced by Appellants, which had been pronounced an absolute fabrication by all the authorities before whom the cause had been heard, and so it appeared to the Court. Respondent had proved that a claim for redemption had been preferred to a competent authority; the law of mortgage, where no condition existed, was undoubtedly as the Zilla Judge had stated it, and there was no proof whatever that any such condition formed part of the original mortgage now sought to be redeemed. On these grounds the Zilla Judge's Decree was affirmed.

Decree 7th June 1823.

N°. 99.

Mr. BEEBEE SAHIB, Widow of MOOHUMMUDJEE, and KUMAL DOSA..... } *APPELLANTS.*

VERSUS

DADA BHAEE RAJUN, and SOOLEEMAN..... } *RESPONDENTS.*

Broach Udalut, Robert Boyd, *Register.*

RESPONDENTS, who were Plaintiffs in the Zilla Court, filed their Suit on the 16th November 1821, in the amount of Rupees 64, as the value of a piece of waste ground in Broach, which they

Claim by Moohummudans for a piece of ground coming by descent from the original possessor. Resisted on plea of its alienation by the first owner to his wife in lieu of Dower. Decreed as sued for by the Zilla Court, but the Sudur Udalut reversed their decisions, holding the alienation valid.

they sought to recover from Appellants in right of inheritance, as Heirs of Mt. Rahut Buhoo, and descendants of the original possessor Ismael. They admitted that the ground formerly had a house on it but had been waste for many years, and was lately taken possession of by Appellants.

Appellant Beebee Sahib answered, that this ground had been long in possession of Moohummudjee her late husband, and on his death she sold it to Appellant Kumal Dosa to raise funds for her husband's funeral.

Appellant Kumal Dosa pleaded that his right of purchase from Beebee Sahib was strengthened by the Huq-i-Shufaut, or right of pre-emption which he possessed as a near neighbour of Moohummudjee, and urged in bar of the present claim against himself, that Respondents were bound to prove that Beebee Sahib had no right to sell the ground, before they came upon him to recover it by action at law.

Respondents produced, as the Title Deed by which their family retained a right to the ground, a Deed of Gift, dated 28th Rujub A. H. 1115, or A. D. 1700, and passed by Ibrahim Yakoob, to his own Son Ismael, to whom he thereby gave up a house, its premises, and appurtenances and put him in possession thereof.

Appellants gave in the Deed of Sale by which Appellant Beebee Sahib on the part of her two sons by Moohummudjee, named Qasim and Yakoob, had made over to Appellant Kumal Dosa, the ground in dispute for Rupees 27-1-00 in order to defray the expense of their father's funeral.

Respondents called two witnesses who deposed that the original owner of this ground was Ismael, whose Heirs were the Respondents. They admitted that the ground had lain waste many years, but that after the Company's Government was established in Broach the father of Moohummudjee attempted to build upon it, when Respondents' ancestors exhibited their Title Deed

and

and the other party left it alone. The witnesses believed the Deed of Gift now exhibited in the Suit, to be the same which Respondents' father had produced as his Title Deed. One of them admitted that Ismael died without leaving a son or Heir.

Appellants called three witnesses. The first deposed that the ground had for the last 25 years been in possession of Moohummudjee, in as much as that whenever persons wished to give a feast on the spot, they asked permission of Moohummudjee as owner of the ground. Witness could give no account of how that person obtained it.

The second knew both Ismaeljee, and his wife Hoor, the Paternal grand Aunt of Appellant's husband Moohummudjee, and from her it came to him through her Nephew, his father Qasim, and had remained with him since then till his death about four years ago.

The third witness deposed that the ground descended from Ismael to his wife Hoor in compensation for her Dower.

Decree 14th March 1822.

The Court found Respondent's claim proved, and decreed to them restoration of the ground by Appellant Beebee Sahib who was to pay all Costs. Kumal Dosa, as Purchaser, being exempted.

Judge's Court in Appeal, J. Kentish, *Judge.*

From the pleadings in the Appeal it was to be collected, that Appellant maintained her right to the ground as descending by inheritance to her husband Moohummudjee from his father Qasim, who got it from his Father Wulee Bhaee, the full brother of Hoor Baee, to whom the ground came in the first instance in lieu of Dower from her husband, Ismael.

Respondents claimed it as lineal descendants from Ismael, through his first Cousins Hussun, and Sooleeman, Sons of his Uncles Rajun and Moohummud, Respondent Dada Bhaee being Grandson of Husun Rajun, and Sooleeman in the same degree related to Sooleeman Moohummud.

The

The Court asked the Moohummudan Law Officers to whom the Estate of Ismael would descend among all the parties?

They answered, that the Estate of Ismael must be considered in the light of Dowry of his wife Hoor, over which Respondents, the sons of his father's brother, retained no valid claim, for this reason, that Dowry is a debt, and debts must be first liquidated out of an Estate; and the Heir of Hoor, widow of Ismael, was her brother's Grandson, who was Moohummudjee.

The Judge found the evidence relative to the occupation so directly contradictory that no aid could be derived from it in grounding the judgment on the fact of possession. The Deed produced by Respondents was of a very remote date, executed above a Century ago, and it would therefore result that the claim for Dower related to the same distant period.

Under these circumstances the Court held that possession by Respondents of the Title Deed gave them an indisputable right, and the Decree of the Register was affirmed in their favor with Costs.

Decree 16th June 1822.

The Sitting Judge remarked, with respect to the Zilla Judge's opinion "that there were not sufficient grounds for "forming an opinion as to the fact of possession, in conse- "quence of the contradictory testimony of the witnesses on "each side," that the evidence of Moohummudjee having been in possession of the ground, was more satisfactory than that to the contrary produced by the Respondents. Finally the Zilla Judge had affirmed the Register's Decree on the strength of the Deed of Gift by Ibrahim to his son Ismael, but the slightest inspection shewed this Deed to be a clumsy fabrication. Old cloth and fresh Ink, and worm eaten marks, which could not be made to fit each other folded in any way were clear signs of its falsehood.

Sudur Udalut, *Sitting Judge.* J. Romer, *Chief Judge.*

The Sitting Judge was of opinion that the fact of the ground having

having passed in Dower to Ismael's Widow, Mt. Hoor, although not distinctly proved, was yet extremely probable from the subsequent possession in that line, and had the Hibbu namu been a true Instrument, there was nothing in it incompatible with the assumption, that Ismael subsequently gave the ground to his wife, in right of her Dower; but the Hibbu namu, on which the Zilla Judge's decision entirely rested, was in the opinion of the Sitting Judge a manifestly fabricated Instrument, not worth a straw, and upon those grounds he thought the Zilla Judge's decree should be reversed by a competent Court, to which he referred the case for that purpose.

Competent Court, J. Sutherland, *Second Judge.* E. Ironside, *Third Judge.*

Decree 19th June 1823.

The Court agreed with the Chief Judge in declaring the Deed of Gift to be a fabrication, and consequently an invalid instrument, and reversed on these grounds the Decrees of the lower Courts, thus adjudging Respondent's claim to be false, and dismissing it with Costs.

N°. 100.

MUHASHUNKUR KHOOSHAL,.....APPELLANT,

VERSUS

HIS WIFE MT. OOTTUM, and others.....RESPONDENTS.

Ahmudabad Udalut, D. Greenhill, *Register.* Gundhurva Cast.

THE action was laid on the 15th June 1822 in the Ahmudabad Court by Respondent Oottum, daughter of Girdhur, and her Guardians, being her mother Nurbhee and Kripashunkur her father's Brother, suing her husband, Appellant, in damages Rupees 800, to obtain a Divorce from him. It was stated in the Plaint that after the marriage had been celebrated Appellant contracted Natra (1) about seven months ago with another woman, and brought her into his house. He complained on the

Claim by a wife for a divorce from her husband, or repudiation of his second Wife. Divorce granted.

(1) Vide (1) to Bombay Cases No. 14.

the criminal side against Respondent for not entering his house, and on the trial Respondent was ordered to cohabit with Appellant. It was to obtain relief from this order, that she now sued praying the Court either to grant her a Divorce, if Appellant persisted in adhering to his second marriage, or to oblige him to repudiate the second Wife, since it was a positive rule in their to Cast, (the "Gundhurvu" or "Musicians and singers,") that no man should marry a second wife during the life of his first, unless she were barren, or blind, or had other material defect, and that he must repudiate oneor the other, since bigamy was not permitted in their Cast. Respondent said that Appellant was also under excommunication by the Cast for this offence, but if he chose to take home her, his lawful wife, and to repudiate the other, and could get readmitted to Cast, she would enter his house, but not otherwise.

Appellant did not deny the fact of having married a second Wife, but pleaded that the Investigation on the criminal side was decided on the Vyuvustha of the Shastree, and was a bar to the present action. The order passed on that occasion was that he should allow Respondent, his lawful Wife, to reside in his house and keep the second Wife in a separate lodging. He was ready to obey this Injunction, but pleaded that he could not be obliged to repudiate the second wife, as Natra was permitted in their Cast.

Respondents replied that the Custom of country and of Cast was paramount at all times to the Shastr, and the Court would find that the Custom was in her favor.

Appellant rejoined that he could produce examples of second marriages in this Cast, and that Respondent's only claim lay against him for maintenance in case he neglected to give it. His claim against the Cast was quite foreign to the subject at issue, and ought not to have been introduced by Respondent in her pleadings.

The Court asked the Hindoo Law Officers, if any person should

should without good and sufficient cause take a second Wife for his own pleasure, whether he could keep both the first and second wife in his house or not.

The Shastrees said, In the first Book of the Yagnyuwulkyu Smritee (the Mitakshura) in the first line of the 2d page of the 9th leaf, on the reasons for a man's second marriage, are these words, " When a wife is either drunken, long diseased, mischie- " vous, barren, expensive, abusive, or bears only daughters, " let her be superseded by another; also if she be inimical to " her husband" (The commentary declares the word "drunken" to apply "even to the wife of a Shoodr, for the half of his " body, whose wife drinks, becomes impure, wherefore to all " alike it is forbidden;" the phrase "let her be superseded by another" to signify the taking of another Wife.) Eight reasons for marrying a second Wife are laid down, but where not even one of these reasons, exists the taking of a second Wife, by the Laws of the Shastr is not proper. Again, should it be done, it appears from the Shastr, in the same line, that even then the first Wife must be maintained, for on failure to him will be a great sin. So that even if he take a second Wife, the wife who first received his hand, must be made glad continually with presents, honor, and proper acts &c. and be taken care of; should he fail to do it a great sin is denounced against him the husband, and against the Prince. (2) In the present case, this person having one wife alive and without any of the eight above mentioned reasons existing for a second marriage having taken another wife, has acted improperly, but still since he has made a second marriage, let him constantly please his first wife in the manner laid down in the Shastr.

Respondent urged that the Shastr did not apply to their Cast, who would all declare the Rules to be against having two wives.

The Court determined to summon the whole Cast, of which there were only twenty four more members. Three of these were

(2) Cole. Dig. Vol. 2d, page 418.

were under expulsion; the fourth was not in a fit state to appear in Court. Of the remaining twenty, nineteen declared on oath, that if there were cause, a man might keep two wives, but not so if no reason existed for doing it. If both the wives agreed, he might keep them both, if not the husband must grant a Divorce (Farighkhut) to the dissentient one. Natra was practised in their Cast.

The twentieth and last desposed that the custom of the Cast permitted a man to have two wives; if either of them did not agree to live with the other, still the husband might keep them both, unless he chose of his own accord to let one separate, but he might not grant her a Divorce, (Farighkhut). Appellant was the son of this witness's maternal first Cousin.

The Court on the general expression of the Cast, decided that Respondent was entitled to a divorce unless Appellant should comply with the terms required by the Cast, and he, being called on by the Court to state what steps he would pursue, replied that he would not grant a Divorce to either.

The Court therefore declared a Divorce between the parties, husband and wife, and gave Respondent full power to act in every respect the same as if no contract had been made with the Appellant, who was to pay Costs of Suit.

Decree 5th Sept. 1822.

Sudur Udalut,
Sitting Judge,
J. Romer,
Chief Judge.

When the Suit came on for hearing in Appeal, it appeared that Appellant was now willing to put away his second wife, but as the Cast had taken up the matter and expelled the Appellant for his conduct in the business, it became necessary to allow him time to satisfy the Cast, by proceeding to the formal repudiation of his second wife, and recovery of his privileges of Cast. For it was understood that this his first wife, Respondent, in that case would waive any right to a divorce under the Decree, and would consent to the re-establishment of conjugal rights and duties between them. The case was therefore laid over for a month. At the expiration of the time, Appellant's Wukeel informed the Court that his client had given

a Farighkhut to his second wife, but had not been able to obtain readmission to Cast, as many of the Members were absent from Ahmudabad. Respondent's Wukeel represented that no intimation of the Farighkhut had been received by Respondent, and that there was a sufficient number of members of the Cast present at Ahmudabad to absolve Appellant from his excommunication if he had sincerely wished to settle the dispute, wherefore he prayed the Court for Judgment.

The Sitting Judge held that further time ought not to be granted, since Respondent was averse to it, and on the grounds shewn in the proceedings by which the usage of divorce in the Cast of the parties had been proved, the Judgment of the Register was affirmed against Appellant.

N°. 101.

DEOCHUND NATHA.....*APPELLANT*,

VERSUS

JUVEHUR BEHCHUR.....*RESPONDENT*.

Ahmudabad Udalut, W. A. Jones, *Judge*.

Suit by Respondent to compel performance of a contract of marriage.

Defence, that the Breach was committed by Respondent, whose betrothed bride had since married another person.

Contract upheld by the Zilla Court, but annulled by the Sudur Udalut on account of the Girl's marriage.

THE Suit was filed by Respondent on the 28th May 1821 for Rupees 5,000, damages sought to be recovered from Appellant for breach of a contract made between them for the marriage of Respondent with Appellant's daughter Lukmee, duly ratified by the Chandla ceremony about 2½ years ago. The parties belonged to the Cast of Khatrees or weavers. Appellant had fixed Respondent's marriage, and that of his second daughter also, for the 3d Margsirsh Sood last, but as the Bridegroom of the second daughter was at the time out of Cast, Respondent refused to celebrate his own marriage at the same time and place. Appellant therefore promised that if he would only keep to that day, he would allow him to bring the Choora, or Bracelets put on the Bride by her father or mother at the time of wedding, and

and Panitr, (a Silk Cloth worn as a wedding dress,) from his own house, and make the Chowree, (a temporary low square altar made of earth for the occasion of a wedding,) himself, and bring every thing else required for the occasion. Respondent sent all these accordingly, and at the appointed time set out to be married at Appellant's house, where he had got an Altar raised. Appellant wished him to sit down with the other Bridegroom who had lost Cast, and did other acts contrary to custom, prevented the marriage, and hid his daughter. Respondent for this left the house, and now sought from the Court an injunction to Appellant to fulfil the terms of his engagement by celebrating the marriage, and against marrying his daughter elsewhere. He said a marriage contract was by the Rules of their Cast never permitted to be broken. He had formerly filed a Suit on the same account, but finding that he had laid his damages too low, gave in a Razeenama, for the purpose of filing the present Suit.

Appellant pleaded in answer, that the Respondent withdrew his former Suit just when Appellant's witnesses were called for, because he knew he could not maintain it, and the present action was therefore not cognizable. Appellant entered into a defence of the breach of contract, urging that so far from concealing his daughter and refusing to marry her to Respondent, he had given him the notice of marriage required by the Rules of their Cast, and Respondent came to his house in consequence. The fact was, that there were two Sects in their Cast; the Bridegroom, whom he had chosen for his second daughter, belonged to his own sect, but the Members of the other, to which Respondent belonged, advised him to refuse being married at the same time at Appellant's house. Not eight days before the marriage was to have taken place, Respondent sat down to eat with the other Bridegroom, which proved the latter not to have lost Cast, and Respondent's excuse to be false. With respect to the marriage itself, he had desired Respondent to sit down, as usual, with the other Bridegroom; Respondent refused, under pretence of his being out of Cast. Appellant had tried every means of satisfy-

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ing Respondent, and even sat in Dhurna 6 days but without effect and had therefore since married his daughter to another person.

The Court in the first instance recorded the Plaint of the former action filed by Respondent, and the Razeenama, from which it appeared that he sued either to have the marriage contract enforced or to get an allowance of Rupees 99 per annum, and he had stated in the Razeenama that he would sue for a specific sum in another action, as he found the claim for an annual allowance not maintainable.

A Copy of a Decree passed in the Judge's Court in the case of Jumnadas Nagurdas versus Prankoonwur, Widow of Khutree Hurgovind, shewed "that Defendant had contracted her daughter Dilkoonwur to Plaintiff but got expelled from Cast before "the marriage. Plaintiff had proposed that she should either "get restored to Cast, or give up her daughter to be married "to him by her relations. Upon evidence of the Cast it was "decided that "a Member of the Khutree Cast could not break "off a contract of marriage duly executed." That whenever "Defendant got readmitted to Cast, she might marry her daughter to Plaintiff, and in case of her failing to perform her contract, she should pay the Damages sued for, Rupees 3,000."

Five witnesses appeared on each side.

Bhaeechund Jetha, said that a marriage contract was never set aside after performance of the Chandla, not even if one of the parties were blind, or lame, since death alone could separate them. Quarrels were not allowed to cause separation. Witness was present when Respondent's marriage procession "Vur Ghora" reached Appellant's house. Admitted that Respondent refused to marry Appellant's daughter, and that the marriage was stopped, but said that Appellant had no right to marry her elsewhere. The dispute arose from Respondent's insisting on having a separate altar for himself because the other

bridegroom

bridegroom was out of Cast. When a double marriage was at any time celebrated, six earthen pots were never used (so that the two center ones might serve for two of the corners of each altar) but the two altars must be formed so far apart as to admit of four pots being used for the four corners of each. Witness was of Respondent's sect.

Jugjeevun Rughoonath, Desawal Bunyun, was sitting at Respondent's house when Appellant's message was received by Respondent calling him to the wedding quickly, that he might be married first.

Heerachund Bhookundas, Khutree was present when Respondent, on the fifth day after that fixed on for the marriage, asked Appellant why he would not celebrate it, and he said to Respondent's Mother that it was an unlucky time, but he would marry his daughter when a lucky day came. Witness heard no other reason given. After the Chandla a marriage was never broken off even for blindness or lameness.

Bhoodur Kulyan Khutree was present at the above conference, and agreed with the witness Heerachund in his evidence, but denied that there was any schism in the Cast.

Munsookhram Govindram, Oudeech Brahmun, Physician, deposed that on the 5th Margsirsh Sood 1877 Appellant came to Respondent's house and offered to let him bring every thing required at the marriage from his own house. Heerachund, Bhookun, Bhoodur Kulyan, and one or two others were present at this conversation. Respondent was a Yujman of witness.

Of Appellant's witnesses, Pitambur Bhaosingh Koonbee, deposed that he accompanied Respondent's marriage procession and staid with him at the lodging (Janivasa, appointed for the Bridegroom and his train in this case) opposite Appellant's house; heard Appellant ask Respondent to get up and set out to the marriage, when Respondent refused. Witness did not hear him assign any reason.

Khemchund

Khemchund Deepchund Khutree, was not at the wedding but at the lodging when Appellant called Respondent to the wedding and the latter refused, on the ground that Appellant did not belong to the Cast. Had heard his father say that there were instances of contracts being broken but never saw an instance himself in the Cast. Natra was customary.

Heerachund Bhugwan Khutree, Appellant's Nephew, saw Respondent sit down and eat with Khooshal, the other Bridegroom, eight days before that appointed for their marriage; after this he had no right to object to being married with him. Never knew a marriage broken off after the Chandla.

Keshuoram Govindram, Gour of the Khutrees, was engaged at the Respondent's marriage; the reason assigned by him for breaking it off was that the other Bridegroom was out of Cast, because he belonged to the other Sect. Witness afterwards officiated at the marriage of Appellant's daughter with Narayun Prannath; it took place on the 10th Margsirsh Sood; received notice of it that same evening. Believed the Bridegroom Narayun had received investiture with the Brahminical thread. Did not read out the Gotr, or Genealogy of the parties on the occasion, as it was not usual to do so.

The Court found from the evidence of the witnesses, that what Appellant had stated in answer was not true, for Respondent only refused to remain to be married at the same time with the other Bridegroom, who was of the other division. And further it had been shewn, both in this and the former Suit, that in the Cast of Khutrees, contracts of marriage are not allowed to be broken off. According to this the contract between Respondent and the daughter of Appellant ought not to be broken, and she ought to be married to Respondent. It was therefore decreed, that Appellant should complete the marriage between his daughter and Respondent, or if he did not do so, should pay to Respondent as damages the sum of Rupees 1,000 and all Costs of Suit on the full amount sued for. If he completed the marriage, each party to bear their own.

Decree 26th August 1822.

The

Sudur Udalut, *Sitting Judge*, J. Romer, *Chief Judge*.

The Appellant grounded his claim to be exonerated from the Penalty of the Zilla Decree, on the fact of his being unable to execute it, having long ago married this daughter to another person, which he had been driven to do by Respondent's refusal to proceed with the marriage, so that the wedding of both Sisters was stopped, as the younger one could not marry before her Elder sister, the Respondent's bride.

Respondent omitted to plead in his defence.

The Sitting Judge considered it clearly established, that breach of a contract of marriage is not permitted in the Cast of Khutrees, and that this Cast is divided into two Sects, which circumstance was the cause of the Respondent's demanding the full number of chuors or earthen Pots, that is to say, as many as each would have had if the ceremony had been performed for one wedding alone. There were probably faults on both sides, but the Sitting Judge could not agree with the decision of the Zilla Judge throwing the whole weight of the consequences on Appellant, by requiring him to do what was now completely out of his power, or to pay damages which he could hardly be said to have incurred any just obligation to discharge. Respondent's leaving his case undefended in the Sudur Udalut did not argue much for his opinion of its justice. Since no case had been made out by which Appellant could be justly charged with damages that he had incurred no obligation to discharge by throwing any legal impediment in the way of the marriage, and as execution of that part of the Decree relating to the marriage of his daughter was now beyond his performance, reversal of the Zilla Judge's Decree was recommended to a full Court.

Competent Court, J. Sutherland, *Second Judge*, E. Ironside, *Third Judge*. Decree 24th July 1823.

Which, agreeing in opinion with the Chief Judge, reversed the Decree awarding all Costs to be borne by Respondents.

N°. 102.

DEOSHUNKUR RAMANUND.... .... APPELLANT,

VERSUS

KASEERAM JUYANUND, Heir of REVASHUNKUR..... } RESPONDENT.

Ahmedabad Udalut, W. A. Jones, *Judge.*

THIS Suit was filed in the Zilla Court on the 19th July 1821. The parties were all of Dholka, and the cause of Action as follows. Appellant filed a Suit No. 9141 against Prubhooram Dhoollubhram for Rupees 1,663. Prubhooram died after the filing of the Suit, and an order for attachment of his house and property at Dholka issued on the 29th May 1819. Appellant got a Decree in his favor on the 5th April 1821; on the 18th June he petitioned the Court for execution by sale of the house &c. and an order was issued to the Nazir to cause Sale of the property of the deceased through the Dholka Umeen, who reported on the 7th July, that he had affixed a notice of Sale on the house on the 22d June. On the 2d July Respondent Kaseeram petitioned the Court to annul the order of sale on account of his claim against the Estate of Prubhooram, and on the 9th an injunction was issued to stop the sale until further orders Respondent then filed this Suit to set aside the attachment, stating that Appellant had no right to sell the property, because it had been already made over to himself by Raeekoonwur, the Childless widow of Prubhooram, by a Deed dated 7th Jesh Sood A. S. 1868 or A. D. 1821 in satisfaction for a Claim of upwards of Rupees 14,000 which he had against her husband. The property consequently came into Respondent's hands on the death of Raeekoonwur, and had been in his possession ever since till the attachment was laid on.

Collusive mortgage for removing the attachment of a Judgment Creditor, annulled by the Sudur Udalut.

Appellant rested his defence on his Decree against Prubhooram, declaring the Respondent's plea of debt against that person to be false, and the Deed the effect of a conspiracy between him

him and the family to cheat him out of his just dues, for Raeekoonwur the widow of Purmanund, was Respondent's own daughter, and it was not to be supposed that his father-in-law could owe him so much money. Raeekoonwur also was blind. As to possession, he declared Respondent never had the house which was let out by Prubhooram's brother to Lukmeeram Bhut.

Respondent gave in, Extracts from his account with Prubhooram for the years 1863, 64, and 65, the balance for the year 1863 being Rupees 11,159-2-12; for 64, Rupees 10,169-2-12; and for 65 the same. And the Deed of Transfer by Raeekoonwur, giving to Respondent in satisfaction for Prubhooram's debt, her house, and a Bond which she held against Nana Meean, to enable him to realize the balance due from him. Also her ornaments worth about Rupees 675, with vessels worth Rupees 75 more. The witnesses were Bhaeechund Bhookundas; Nundram Dhoolubhram; Jetha Dhoolubhram; Trimbuk Dhoolubhram, and Deonarayun Dhoolubhram, (brothers of Prubhooram). Copies of the depositions of the three last named persons, given in a suit in the Udalut decided in the Judge's Court, (probably one filed by Respondent against Raeekoonwur or her Heirs to settle the Deed of transfer and insure his retaining possession under it,) were exhibited in proof of the Deed.

Appellant called Lukmeeram Bhut, who proved, by production of a Lease, that he had rented the house from Nundram and Jetha Dhoolubhram since 6th Margsirsh Sood 1875, or 3rd Dec. 1818, and that Appellant repaired the house since the attachment. Two other witnesses corroborated his statement.

Appellant pleaded that in the Deed of Transfer by Raeekoonwur neither the amount nor date of Prubhooram's debt to Respondent were entered. The Court thought it unnecessary to examine into this, since the point in dispute was Respondent's right in the property, which was proved by the Deed, and the evidence. With respect to possession, Jetha Dhoolubhram had

deposed

deposed that he rented the house to the Bhut by desire of Dhoolubhram and Prubhooram.

The attachment was ordered to be removed by Appellant he bearing all Costs.

Decree 26th August 1822.

Sudur Udalut, *Sitting Judge.* E. Ironside, *Third Judge.*

The Sitting Judge declared that the strongest suspicion existed for believing the Deed of Transfer to have been fabricated in view to secure to those concerned the property of Prubhooram Dhoolubhram, which would otherwise go to the creditors of the deceased. This belief was grounded on the circumstances of the widow of Prubhooram, the person stated to have passed the Deed, being the daughter of Respondent, and the whole of the subscribing witnesses being the brothers of the deceased, and also nearly related to Respondent, from which suspicion arose that the parties being all interested, entered into a family compact to keep possession of that which without a contrivance of the kind suspected would inevitably have fallen to Appellant. This conclusion was strengthened by the fact of Respondent never having had possession of the house or derived any benefit or emolument from it; indeed it was established by the Lease in 1875 that two of the brothers of the deceased Prubhooram, witnesses also to the Deed of Transfer, passed a Deed in their own names to one Lukmeeram Rayah letting the house to him at an annual rent of 6 Rupees. In addition to what had been already stated, the Sitting Judge doubted (even admitting the Deed of transfer to have been duly and regularly passed by the widow Raeekoonwur) whether by the Hindoo law or by the custom of the country it could be allowed to hold good, since it was not competent in his opinion for a widow, where there are many claimants, to make over to one only the whole effects of her deceased husband to the exclusion of the remaining creditors. For these reasons the case was laid before a Competent Court.

Competent Court, J. Romer, *Chief Judge.* J. Sutherland *2d Judge.* Decree 3d July 1823.

The Court concurred in opinion with the third Judge, that the Deed of Transfer was a fabrication. It was therefore annulled and the attachment ordered to stand good, Respondent being

being adjudged to pay to Appellant Costs and interest at 12 per Cent per annum on the amount to be recovered by him on the sale of the property attached, from the 9th July 1821, being the date on which Respondent sued to have the attachment removed.

N° 103.

GOVIND NANA BHAEE.....*APPELLANT*,

VERSUS

GOVIND RUSEEK.....*RESPONDENT*.

Sudur Udalut, J. Vibart, *Register*.

Suit for an injunction to compel Appellant's resignation of a Claim to the office of Dullal of Bunjaras at Surat. Injunction granted,

ON the 14th May 1822, Respondent filed a Suit for Rupees 800 against Appellant to compel him to resign all claim to the Office of Dullal, or Agent, for Bunjaras, which descended to Respondent from his father and had been secured to his Ancestors by Sunnud from a Nuwab of Surat. He said that Appellant had since A. S. 1870 or A. D. 1814, taken upon himself the office, and had levied his Huqs from the Bunjaras, which obliged him to sue for an injunction to Appellant to refrain from interfering with the Office or levying any Huqs from them in future.

Appellant in answer claimed the right to dispose of goods for the Bunjaras, asserting that from the earliest times he had received their imports and disposed of them, and Respondent could not claim any exclusive privilege in such matter, nor sue him for recovery of any receipts on that account: as to the monopoly being sanctioned by the Nuwab, his Sunnud was of no effect, because a Royal Furman was required in such matters.

The Sunnud was dated 18th Zilhuz A. H. 1198, or A. D. 1783, granted under the seal of Suyud Moee ood Deen Qaim

ood

ood Dowlut Buhadoor (Grandfather of the present Nuwab of Surat) to Wullubh, son of Jugjeevun, son of Ramdas, son of Narayundas, of the Dusa Lar Bunyun Cast, Dullal of the Bunjaras. It declared that the Dulalee, or office of Dulal, had been secured to Ram the son of the above named Narayun, by Sunnud from the Umeer ool Oomra Feeroz Jung, and had remained with him as an inheritance, wherefore it was necessary to continue this Office to his decendant above named, and prevent any other person from interfering with him; and the office was confirmed to him accordingly.

The Court now called upon the Collector to allow the attendance of his Karkoon Moogutlal Nuthoo Bhaee with all the Dufturs in which the Nuzurana of the Bunjara Dulals were entered; and an application was likewise made to the Collector of Sea Customs to send his Karkoon Tooljaram Girdhurlal with the Daily Reports for the last 25 years of the Ghule Mundevee (a place near the Dehlee Gate where all supplies for the City, whether raw produce or manufactured articles for consumption, are first brought and customs levied on them.)

Respondent referred the Court to a Precedent in his favor, being the following decision of the late Court of Appeal.

KHOOSHAL MOTEE.....*APPELLANT,*

VERSUS

VENEEDAS SETH, and others, the Cast of MAPARAS, or wholesale Grain Dealers } *RESPONDENTS.*

Surat Udalut, S. Bourchier, *Assist. Judge.*

Suit by Appellant, a Retail Grain Dealer, against the Company of Maparas, or wholesale Dealers, to obtain the

APPELLANT filed a Suit on the 6th March 1810, against the Respondents, claiming damages from them for having refused him leave to carry on business as a Mapara. He stated that his father Motee Jetha at one time was a wholesale Dealer in Salee (Rice in the Husk) and died, leaving Appellant his son then a Boy, who when grown up was for a short time a Firokhtiya, or Retail dealer in the same Article. He now wished

wished to resume his father's wholesale trade, but when he applied for the purpose to Respondent Veneedas, Seth or Head of the trade, he was put off and had not been installed by him up to the present time.

rights of the Company. Disallowed.

Respondents answered that Appellant had no right whatever to claim the freedom of their Body, for his father never exercised the trade, as would be seen by the Ghule Mundevee Accounts, in which his name was not to be found. The present claim was set on foot by the Firokhtiyas or Retail Dealers to try whether they could not get a share in the Maparas' profits, but the two Trades were, and always had been, prefectly distinct.

The case it appeared had first originated with the Respondents, who, when called upon by the Collector in A. D. 1805 to pay the usual Saliana, or yearly Dues from the trade, took occasion to complain of the Appellant's interference with their privileges. The case was investigated by the Collector, and the result was a Bundobust, or Penal Engagement executed to him by Moolchund Motee, Juvehur Bhaeedas, and the whole Punchayut of Firokhtiyas, who thereby became bound "to confine themselves to their Trade of Firokhtiyas, and not "to interfere with that of the Maparas, provided always, that "the Maparas should not interfere with the business of Firokh-"tiyas. Any one departing from this engagement to pay Ru-"pees 151 as the Fine for breach of it to Government." It was Dated 28th December A. D. 1805, and was signed by nine Firokhtiyas, and by Appellant among them. The original of this Paper was forwarded to the Court by the Collector, who explained "that it was entered into in consequence of com-"plaints by the Maparas of the Firokhtiyas' interference in their "Trade; that it was only a few months before this that Appel-"lant attempted to carry on the trade of a Mapara, but his claim "to do so was not admitted because it appeared, on reference "to the oldest officers of the Ghule Mundevee, that none of his

"family

" family had ever been in that Punchayut, or ever paid any part " of the yearly Nuzurana to Government."

Appellant acknowledged his signature to the paper, when shewn to him in Court, but urged that he had not violated its terms, because it was only meant to prevent one and the same person from following both the wholesale and Retail Business, whereas he wished to leave the Retail Trade and set up as a wholesale Dealer, which was not contrary to the spirit of the Engagement.

Respondents exhibited the accounts of the Trade for A. S. 1828 and 29, with Appellant's father as a Firokhtiya.

Appellant admitted in Court that it was after this that his father set up trade as a Mapara.

Respondents called Ram Raee Jethmul, a person who had been forty years a writer in the Ghule Mundevee. He deposed that the name of Appellant's father was not entered in the Books, —as those of all the Maparas were, and that he was not a Mapara—That about 37 years ago the Bukhshee and Zafur Yab Khan, who had charge of the Ghule Mundevee, had a dispute. The Bukhshee retained the two Purgunnas of Kurod, and Valor, and appointed Appellant's father as the Mapara over them—That he held the situation for about two years, when Respondents complained to the Nuwab, and the Bukhshee was obliged to dismiss Appellant's father, and make him return to his former trade of a Firokhtiya, from which time the two Trades had been quite distinct, so that a member of one could not be admitted into the other.

Appellant challenged this evidence and offered to prove by his Books and witnesses, that his Father traded as a Mapara. But the Court held that it was of no use, since from the evidence of Ram Raee, his trading as a Mapara had been deemed irregular, and prevented. This evidence was supported by the

fact

fact of his never having since exercised this Trade; moreover the Collector's Report contained sufficient grounds for throwing out the suit, which was dismissed.

Decree 28th March 1810.

This decision was affirmed by the Court of Appeal, that Court being of opinion that Appellant ought to be kept to the Engagement which he had signed.

Court of Appeal, N. Crow, *Chief Judge.* T. Day. *Second Judge.* J. Romer, *Actg. 3d Judge.* Decree 17th August 1811.

The above Case having been read over, Respondent asked Appellant, whether he paid any fees to Government as the Bunjara Dulal? He said he did not. Whether he entered his own name in the Ghule Munduvee Duftur? He said that he entered his own name, and that of Respondent's father as Dulal, because the latter person's name was always used.

Respondent gave in a receipt of the 25th May 1818, from the Collector for Rupees 45, as the Nuzurana on the salt collections of the Bunjara Dulal, entered by Moogutlal Nuthoo Mehta for the year A. S. 1874 on A. D. 1818.

Moogutlal Nuthoo deposed that he was a Karkoon in the Salt Department, and that the Bunjara Dulal, *who was Ruseek Wulubh*, had paid a Nuzurana of Rupees 45, to Government in that Department. Ruseek Wulubh's name was entered in the Government Book, and from A. S. 1857 till 1875 the fee had been regularly entered every year by witness or his father, as paid by Ruseek Wulubh—Knew th at he possessed a Sunnud and was considered by Government as the Patel of that Department. No one else was known to Government in that capacity. Appellant was a Mapara—could not say whether any other besides Respondent sold goods for the Bunjaras—The Duty of Bunjara Dulal was to dispose of their loads and discharge them at once. A Fee, or Moothee, was formerly taken by the attendant Karkoon from each load, which was forbidden by orders from Government on the 22d June 1808, and this Moothee was paid to the Karkoon by Respondent's father.

The Witness gave in the account of Nuzurana Receipts from A. S.

A. S. 1857 until 1874, none of which were in the name of Appellant.

Tooljaram Girdhurlal, Karkoon in the Sea Customs' department, deposed that Respondent was the Dulal of the Bunjaras, and that Appellant's name was not to be found in the Government Books as Dulal, nor was he known in that capacity.

This witness produced accounts for the years 1809, 10, 16, 18, and 21 of the Receipts from the Ghule Munduvee.

Bhana Bhace Manikchund Mapara was called to prove that Appellant was a Mapara, and that no one of that body could act as Dulal, or sell Goods for other people in any way.

Appellant called three witnesses, from whose evidence it appeared that Appellant was a Mapara and Respondent the Dulal, and that in all the Receipts which were given they entered Respondent's Father's name as the Dulal, until this year, when that of Govind, Appellant, was inserted, but that Appellant had been in the habits of selling the Bunjaras' loads for some years past.

The Court asked Appellant to produce some of the Receipts; he said they were in possession of the Durwan, but admitted that Respondent's name was entered in them as the Dulal. On a question from Appellant, Respondent allowed that Appellant had acted for him with his permission for about ten years, and that the present action arose on Appellant's getting the notes or Receipts drawn out this year in his own name, as Dulal.

The Court found it proved, that Respondent's Ancestors held the situation at present in dispute, and had always paid the Government fee of Rupees 45. Appellant pleaded having acted in the situation, but it appeared from the Government Books that he transacted the business under Respondent's father's name, and it was apparent that he merely did so from permission granted

ed by Respondent, in whose favor Decision was therefore given with Costs.

Decree 4th Sept. 1822.

The Court was clearly of opinion that the judgment passed by the Register was a just one, and affirmed it against Appellant with Costs.

Sudur Udalut, *Sitting Judge*, E. Ironside, *Third Judge*, Decree 21st May 1823.

N° 104

APAJEE NARAYUN TERE DESSAEE.....APPELLANT,

VERSUS

NARO TRIMBUK JOOVEKUR.....RESPONDENT.

THE Suit was filed on the 22d April 1822 by Respondent and referred for decision to the Sudur Umeen. It was for Rupees 64, being Rupees 47, amount of Government Revenue derivable from the Khotee lands, and Rupees 17, profits of the office of Khot, of the village of Barujkhol in the Turuf Khetowre Talooka Rutnagiree, which Respondent sought to recover, declaring it to have descended to him by right of inheritance from his Ancestors in uninterrupted possession until Margsirsh Tissa Ashur or December 1818, when Appellant seized and detained it.

South Konkun Udalut,

Sukho Ramchundur, *Sudur Umeen.*

Claim by Respondent for the Khotship of Barujkhol, Talooka Rutnagiree. Dismissed by the Sudur Umeen but granted on Appeal by the Judge and the Sudur Udalut.

Appellant in answer denied that Respondent had any right to the Khotship, which by his account, fell to Government in the time of the Surkhelkur (Angria) by desertion of the village when the former Khot, Barja, fled the Country, and it was then cultivated by Ruyuts from the surrounding villages, and the Revenue with the profits of the Government lands, Gardens, &c. were assigned to the fort of Jaegurh. In Sittu Khumsueen A. D. 1756, his Ancestor Naro Anunt Tere, petitioned the Government to give him a grant of the village, and from that time it had remained in their family.

Respondent

Respondent replied that his own Ancestors purchased the Khotee from the Barja family, and held it until Angria's Government was superseded by that of the Peshwa, and after that time till they failed to pay their Revenue in consequence of poverty, and were obliged to leave this village, and that of Chaphelee of which it was a subordinate Hamlet, and to fly the Country. Government then took the village under its care, and Appellant might have held them of the Government without having a claim thereby to the proprietorship. When Respondent's family returned to the Country, the villages were restored to them, and continued with them till Tissa Ashur, as stated in the Plaint.

Appellant rejoined that it was the first time he had heard of the sale, and so far from Barujkhol being dependant on Chaphelee, it enjoyed all the privileges of a village.

Respondent gave in a Sunnud dated 4th Rujub Tissa Tissueen wu Uluf A. D. 1699, from the Sur Soobedar of the Rajpooree Prant, founded upon one from the Punt Amatyu, granting and confirming to Huree Wiswunath Barja, in addition to his former Rights as Deshmookh, the Khotee of this Village, as the duties of the Office had been all along performed by him.

The Deed of Sale of 1st Kartik Sood 1649 by Ragho Anunt Barja, Khot of Barujkhol, to Balajee Huree, and Ragho Timajee, Joovekurs, Khots of Chaphelee, confirming to them by a positive sale the Village of Barujkhol, already in their possession, on account of his debt to them of Rupees 500, borrowed by him to pay his Government dues.

An Order dated 22d Zilkad Subba Ashur, from the Soobedar, directing the two Villages to be resumed from Appellant, who had been put in possession, and to be delivered over to Neelo Rughoonath, the original Khot.

An agreement by Appellant with Vinaik Punt Bhut for a four years' lease of the Village from him. It was dated 9th Magh Sood Ashur, A. D. 1810.

Appellant

Appellant gave in five years' accounts of the Village for the years Summan Subbueen A. D. 1778; Summan and Tissa Miyaten wu Uluf A. D. 1807, 8, 9; and Sittu Ashur A. D. 1816, all headed " Tunkha of the Fort of Jaegurh."

A receipt of Tissa Subbueen A. D. 1779, for three maunds of Bhat for the Fort of Jaegurh paid for the Village by Gopal Junardhun Tere Desaee; one of the same kind for Ashur.

An Order from the Sooba in Ihide Ashur A. D. 1811 to the Karkoon in charge of the Village, desiring him not to demand from Appellant the Swamitvu, since he had brought an order from Poona declaring the Village to be an Escheat.

Other receipts of the same kind for several years, all in the name of Jaegurh.

An order dated 26th Zilkad *Summan Ashur* from the Soobedar to the Village, declaring it to belong to Government, and informing them that Government had taken it from Neelo Rughoonath, the Khot of Chaphelee, and given it, liable for the full Revenue, to Appellant *for that year.*

An order from the Sooba to the Village in Sullas Ashur declaring that Vinaik Huree Bhut had no right whatever to take the Village from Appellant.

Respondent's witnesses were called. " Vinaik Huree Bhut, the " first of them, deposed that about 12 years ago he was put in " charge of the Village of Barujkhol and Chaphelee on the part " of the Government, and that Barujkhol was farmed out to " Appellant for five years, the Government taking one Rupee " from him as Swamitvu *in acknowledgment of his having* " *no right of ownership in the Villages.*" Four years he held them under the lease, and in the fifth, Arba Ashur A. D. 1814, Appellant procured an order for both the Villages being taken from witness and delivered up to him. After he had been in possession, Respondent's brother got the Government to deliver both

of

of them up to him. Two years after Appellant ousted him, and had held them ever since. Witness heard the village formerly belonged to a family of the name of Barja.

Kasee Rugoonath Bhole said that the village in dispute formerly was held by one Trimbuk Narayun, from whom it came to Wittul Mahadeo and Neelo Rughoonath, Respondent's relation, who left the country in Sittu A. D. 1806, and witness knew nothing further.

Rankojee Dhunwara, a Cultivator of Chaphelee, deposed to the same effect, adding "that the Manu, or Honors of the Head "of the Village, were always paid at the Government Chokee," thereby acknowledging it to be in the hands of Government.

The Mhar of Chaphelee said the same. On the part of Appellant, Dhunajee Rao Salvee, Khot of Malgoond in the same Turuf, said he had heard his father say, that after Barja's family became extinct the village escheated to Government whilst the country belonged to Angria, and remained in the hands of Government after it fell to the Peshwa. The Tere Dessaees got it from that Government, under what title he could not say but had held it for the last 15 years, and paid the Khot Puttee, the first year of the Company's Government. Trimbuk Narayun and Wittul Muhadeo Joovekurs certainly had possession, but Appellant always said it was from him.

Gomajee Govind Maluk spoke to the same effect, denying Respondent's possession.

Lukshumun Sudaseo Gudre the same, adding that Respondent's family had held the village from Appellants but only for one year during the last 15 years.

Yessajee Bajee Chowgoola, the same. Huree Bajee Deshkoolkurnee gave the same account. Appellant endeavored by his evidence also to shew that the Respondent's Deed of Sale was deficient in the execution, in as much as it was not attested

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ed by the District Officers, which this witness deposed was absolutely necessary to its validity.

The Sudur Umeen found that Barja, the original proprietor, had not completed the Deed of Sale, because it wanted the attestation of the District Officers, which was required by the custom of the Prant. Respondent had likewise failed in any way to shew in what year he left the country, and when he returned. *It was also in evidence that the village had lapsed to Government, from whose tenant Appellant had taken it in farm.* The proof adduced by Appellant was stronger than that of Respondent, and it was adjudged that Respondent's claim should be dismissed with Costs.

Decree 7th June 1822.

The Respondent appealed against this decision to the Zilla Judge, who held that Respondent, by the Sunnud and Deed of Sale exhibited by him, was clearly proved to be the original proprietor of the village, and that Appellant had no hereditary claim to the property beyond having been placed in the Khotship by the Surkar during the absence of Respondent. From Respondent's exhibits it was shewn that Respondent obtained possession of the village on his return to it about six years ago, and although Appellant had exhibited the order of a later date, 26th Zilkad Summan Ashur, yet as it was not a regular Sunnud, and did not specify on what grounds it was issued, it did not constitute a right to the village—Under this view the Sudur Umeen's decree was reversed in favor of Respondent with costs against Appellant.

Judge's Court in Appeal, V. Hale, *Judge.*

Decree 13th July 1822.

The Court felt no confidence in the evidence adduced on either side, and the Judge was called upon to take further evidence as to who was the actual possessor of the village for the last sixty years, having recourse to the evidence of the most respectable public Officers of the district and village, and consulting the Collector, or depositary of the Public records on the same subject. From the Collector were obtained copy of a record of assessment of the village for the year Tissa

Sudur Udalut, *Sitting Judge.* J. Sutherland, *2d Judge.*

Summaneen

Summaneen A. D. 1789, and of a Bond of the same year signed in the name of the village by the Khŏt, " Ragho Narayun Joovekur."

Respondent himself exhibited an account of the village for Ihide Summaneen A. D. 1781 in the name of Wittul Muhadeo Joovekur " Khot of Barujkhol and Chaphelee." And a lease passed by Balajee Punt Gotge to Wittul Punt in the year 1715 or A. D. 1793, taking some land of him for three years.

Govind Keshow Bivulkur, a witness, said he was sixty years old, and in that time had seen Dhako Narayun, Lukshumun Govind, and Wittul Muhadeo, Joovekurs, in possession of the Khotee until about 25 years ago when they left the village. Their former possession lasted about 40 years, *and the village had been held by Government since that time.* Three other persons deposed to the same effect.

Competent Court, J. Romer, *Chief Judge.* E. Ironside, *Third Judge.* Decree 5th Feb. 1824.

The Court found Respondent's right much clearer from this evidence than it was before, and was for supporting the Judge's Decree in his favor, but referred the case, as one of doubt and of some consequence, to a full Court, which fully affirmed the Decree of the Zilla Judge, against Appellant, with all Costs.

N°. 105.

HENRY AGAR Esquire, Collector of Sea Customs..... } *APPELLANT,*

VERSUS

DHOOLUBH BHOOLA and two others, Patels of the Jumaut of Silk Weavers; and TRIKUM HANSJEE, Karbaree of the Punchayut..... } *RESPONDENTS.*

Surat Udalut, E. Grant, *Register to the Sudur Udalut.*

ON the 4th September 1822, Appellant laid his action in the Surat Udalut, against Respondents to recover from them as the Patels

Silk Weaver's Jumaut.

Suit by the Collector of Sea Customs, to prove the Patels personally responsible for the Government dues of the Jamaut.

Patels held free from liability, and the Collector referred to process against individual defaulters.

Patels and Karbaree of the Jumaut or Trade of Silk Weavers and spinners (Chiefly Koonbees) Rupees 621-2-0 balance still unpaid by certain Members of the Trade, of the Government Dues upon Silk wheels for the year commencing 1st May 1820, the yearly amount of Fees being Rupees 1,880.

Respondents said that the sum of Rupees 1,880 even was not justly due from the whole Jumaut, for the old tax only was Rupees 1,500 under the Nuwab's Government; until Zafuryab Khan was entrusted with the Collection of it, and laid on Rupees 380 more, which he put into his own pocket. It had however been continued, and they had nothing further to say. But the Honorable Company's Collectors had invariably collected it from each Weaver, suing defaulters individually in the Udalut for the amount due by them. They as Patels were accustomed to point out such defaulters, but had never executed any agreement to become answerable for the Punchayut. Pitamber Nana Bhaee had farmed these Collections for the year in question, but was dismissed after five months by Appellant, who appointed Behchurdas and Lulloo Mehtas to transact the business, and to them Respondents had pointed out the individual debtors. Nothing remained due by themselves as individual members of the Cast, and as Patels they were not responsible for the rest.

Appellant urged that Respondents, as Heads of the Jumaut, transacted all its affairs with Government, which knew none but them, and would look to them in this, as in all other business of the Jumaut, and not to individual members.

Respondents declared that the same demand had been made by the Collector of Surat, Mr. Morison, who considered the Patels responsible, but on their representing the case he had conceded the point, and ever afterwards prosecuted the individual defaulters alone; and further, that the Appellant himself had realized the whole of the sum, admitted by him to have been received in the year in question, through his Mehta and Peon from individual members, who had receipts to prove it.

The

The Appellant's account shewed Receipt at different times of sums amounting to Rupees 1,292-2-0, which, deducting exchange, left the sum sued for still due. The account specified no names.

Juggunath Bhikajee, of the Land Collector's Office, deposed that so long as the Collections under this Head were made by the Collector, they were not levied from the Patels, but the Patels used to levy the amount from the different members, and pay it to Government. Whenever Respondent complained that they could not recover from any particular person, assistance was given by the Collector, and if that failed the defaulter was confined by him. That the Patels were called on always to point out defaulters, and in case of the Collections being farmed out the Cast were always parties to the engagement then entered into. No writing had been ever taken from the Patels themselves to be answerable for Government dues, nor did they receive any Salary from Government.

Lukmeechund Nagurdas, Silk Spinner, deposed, and supported his assertion by production of the Receipts, that Appellant's Mehta and Peon had levied the dues from him. That on one occasion the business was stopped for a week by Appellant, and his people called together the Trade and Respondents, and took account of each individual's dues to Government and noted it down, and that this process was always adopted when any persons absconded, the Government coming upon the Punchayut for the loss. The receipts were given by Lulloo Mehta and Behchurdas in Appellant's name.

Muthooradas Laldas, Silk Spinner, deposed to the same effect respecting the collection of the Government dues.

Appellant called four witnesses. Behchurdas, the person alluded to as collecting the dues for him, deposed that the Patels levied the Government dues from the Trade, but Appellant received it also, without reference to Respondents the Patels, from any

any one who chose to pay it direct. Respondents had paid in several sums on account of the dues. He admitted the receipts exhibited by the witness Lukmeechund. Rewa Govind, Silk Spinner, deposed that he levied the Government dues on account of the Farmer from the Punchayut, on the information of the Respondents.

Duyaram Huree Bhaee, Silk Spinner, deposed that each member of the Punchayut paid his dues as previously fixed by the Respondents, Patels of the Cast, in a paper drawn up by them.

Pitamber Nana Bhaee, Do. Do. formerly held the farm of Silk Wheels for A. S. 1875 and 76; for each year he paid Rupees 1880. The whole Punchayut signed, through the Patels, an agreement to him, the Patels signing as "on the part of the Punchayut." He levied the Dues as laid down against each person in the agreement. The Collections had always been made from the members of the Punchayut, not from Respondents; even when Government kept the collection in its own hands, whenever any one failed to pay he and his securities were confined, and the Patels also, but they never were obliged to pay for other persons than themselves.

The Court did not consider Respondents to be answerable; it did not appear from any evidence adduced, that it was customary for them to be responsible personally for any Government balance that might be outstanding, neither did it appear that they ever made the collections without having either a Government Mehta or Peon with them. It was satisfactorily proved and admitted by Respondents, that it had been customary for the Patels of the Punchayut to point out the person with whom the Government balance rested, on being called on so to do. It was also proved that Appellant put a stop to the whole of the Silk Wheels, on account of the balance of the Government Fees due on them, and that the whole Punchayut with a Government Mehta and Peon assembled for the purpose of collecting them.

them; and it was distinctly shewn that this meeting took place at the instance of Respondents, from which it appeared to the Court that no responsibility could be attached to Respondents for the Government balance, since the persons with whom it rested were no doubt pointed out by them to the Mehta and Peon, and it did not appear that Appellant called on them for their assistance after this meeting took place. Appellant's suit was therefore dismissed, it being provided that Respondents should according to custom point out the persons with whom the balance rested, when called on by the custom Master so to do, he being at liberty to prosecute the defaulters for the same.

Decree 10th Sept. 1822.

Sudur Udalut, *Sitting Judge.* J. Sutherland, *Second Judge.*

Appellant objected to the decision on the grounds that Respondents levied from the Punchayut for the year 1820, Rupees 1916-1-0, and only brought Rupees 1,250 to the Surkar's Account; having appropriated the balance to their own Account; also that Respondents were personally responsible in their Official Capacity for the annual payments being made in full.

The Sitting Judge thought it material in the first instance to settle the last objection. Appellant being called on to shew his proofs referred to the evidence taken in the lower Court, dwelling on the strength gained to his position by the Putta entered into by the Punchayut; this however it was held could avail him nothing, as it merely shewed that a fixed annual tax was levied and the Patels determined how it was to be paid by each individual. This point therefore was declared not tenable, and the Court proceeded to the first, regarding which Respondents declared that they had not done what was alleged, and only waited for the opportunity which had not been afforded, of pointing out the persons against whom there were balances.

Appellant agreed to adopt this plan, and the case was postponed with a view of affording to the parties an opportunity to come to an amicable adjustment of their differences, not as admitting the line pursued by Appellant's Wukeel to be correct.

On

On resuming the Appeal Appellant's Wukeel represented that no adjustment had been effected and consequently, proposed to proceed in the course already recorded, to shew that monies had been taken up and not brought to account by some of the parties sued, particularly Trikum Hansjee. The Sitting Judge met this by stating that the substance of the Appeal now put forth was entirely new, and would actually, if gone into by the Sitting Judge, be tantamount to trying a new case, as no mention was made of these matters in the lower Court.

The Sitting Judge therefore conceived that the decision passed by Mr. Grant should be affirmed, the Collector of Sea Customs having full liberty to proceed either against the Individuals by attachment of their persons as revenue defaulters, or by suit, or to sue the particular Patels who had collected the Surkar's dues and not brought them to account.

But as the case involved considerations of some importance to the public interests, the case was referred for the final Judgment of a Competent Court.

The Court fully agreed in opinion with the second Judge, and affirmed the Decree of the Register to the Sudur Udalut against Appellant with Costs.

Competent Court,
J. Romer, *Chief Judge.*
E. Ironside, *Third Judge.*
Decree 9th August 1823.

N°. 106.

LALUN BUHOO SONARIN, daughter of SAHIB BUHOO,..... APPELLANT,

VERSUS

JEEVUN HASHUM SONEE,..... RESPONDENT.

ON the 6th May 1820 Respondent filed a suit against Appellant to recover the sum of Rupees 300, loss incurred by him on the following account. In the month of Posh A. S. 1876,

Kaira Udalut,
G. L. Elliot, *Register.*

Claim by Respondent for damages from Appellant, his betrothed bride, for breach of the marriage contract.

Full damages decreed by the Zilla Courts, modified by the Sudur Udalut.

1876, or Dec. 1819, the parties, belonging to the Trade of Moossulman Goldsmiths, by mutual consent entered into a contract of marriage together in the most public manner in presence of the Cast. Respondent kept Appellant in the house of his daughter, gave her ornaments to wear, and whatever she wanted, and maintained her mother and sister besides. After about five months and a half passed in this way, Appellant privately left him, and got married to one Ullah Bukhsh. The loss for which he now sought remuneration was what he had laid out on the maintenance of Appellant, her mother, and sister, and the actual damage sustained to his trade by being obliged to attend a prosecution at the Udalut.

Appellant denied that Respondent had any just claim against her. She was contracted about six years ago to Ullah Bukhsh, who afterwards went to Palwara, and Humud Fazil who came from that place persuaded her that her betrothed husband had renounced her, and he, Humud Fazil, promised her a Dower of Rupees 500 and an acquittance from Ullah Bukhsh if she would marry his father-in-law, who was Respondent. She agreed to it, and went to live in his house, after being bribed with large presents and a promise that no one should know of it, and receiving a Farighkhut as from her former betrothed husband. Ullah Bukhsh however learnt the circumstance and came to Kaira. An explanation took place and she left Respondent and went to live with her husband. She now pleaded that what Respondent had expended on her, he had no right to recover. As to his expenses for her mother and Sister, she had nothing to do with him, nor with the loss of his business, which was caused by his own act.

The Court wished in the first instance to learn from the Moohummudan Law Officer, if a Woman of her own pleasure contracted herself to any man, and lived with him for six months, getting to eat whatever she wished, and having her mother and Sister also maintained by the same person; and

if

if after this a third person should sue him, and load him with Costs, and that woman should afterwards leave him and marry a fourth person, whether he had any just claim to remuneration for his expenses from that woman or not?

He answered, that in such case, it would be incumbent on the Court to award repayment by the woman, of all he had spent upon her, under the authority of the Futave Alumgeeree, Zukheerut-ool-Futava; Futave Qazee Khan; Zukheerut-ool-Boorhaniyu; Buyaz-i-Mukkhdoom Hashumee; and the Ushba-o-Nuzaeer. With respect to the Costs of the former Suit, if the woman, being already contracted to another, had concealed it from this man, and deceiving him had made him the means of resisting the other man's claim, by setting him up against the other, and such were clearly proved, all Costs of the former suit must be awarded to be borne by her. If not proved, nothing must be awarded but the sums spent on her personally. This from the Ushba-o-Nuzaeer.

This answer being in favor of the admissibility of the claim, the Court called on Respondent to prove that he maintained Appellant, her mother, and Sister, for 6 months, and that he suffered a loss by being obliged to come to the Udalut during the same time.

He named four witnesses who all agreed in declaring that Appellant lived with Respondent for six months; that his expenses were about 30 Rupees per mensem on that account, and that he lost 15 Rupees a month by being obliged to shut up shop to attend the former suit at the Udalut. Two of them added that Appellant's mother and Sister also lived with Respondent, and were maintained by him.

The Court decreed the claim proved as set forth in the Plaint, and referring to the former suit, found that Respondent had incurred an expense therein of Rupees 28-2-0; wherefore it was decreed that Appellant should pay to Respondent the sum of

Rupees

Rupees 293-2-0, being her maintenance during 6 months Rupees 175, and Rupees 90 loss by attendance at the Udalut, and the costs of the former suit Rupees 28-2-0, together with all costs in this action.

Decree 28th August 1820.

Judge's Court in Appeal, J. D. DeVitre, *Judge*. Decree 17th Feb. 1822.

The Appellant sought redress against this decision in the Zilla Judge's Court, but her Appeal was thrown out.

Sudur Udalut, Special Appeal, *Sitting Judge*, H. Ironside, *Third Judge*.

She rested her pleadings in the Sudur Udalut on the same grounds that she took up in her defence in the Zilla Court, and Respondent's Wukeel declined entering any answer, considering his case sufficiently clear from the Record of the trial in the lower Court.

Kaira Udalut, G. L. Elliot, *Register*.

With the Proceedings of the Appealed case the Zilla Judge handed up the Record of the other suit therein referred to as that for which Respondent had incurred the costs adjudged to him in the above Decree.

It was filed on the 28th December 1819, by Jumal Bhaee Kumal Bhaee Sonee in the amount of Rupees 150, against both Appellant's mother, Sahib Buhoo, and Respondent, for breach of a contract which Sahib Buhoo had made between the Plaintiff and her daughter, Appellant but since set aside by the contract between Appellant and Respondent, (the breach of which again by Appellant gave rise to the present Appeal to the Sudur Udalut.)

The object of Plaintiff's suit was to have the contract with him enforced, on the ground that under the *Moohummudan* Law a marriage made with the free consent of the Bride could not be set aside.

Appellant Lalun represented by motion to the Court the day after the filing of this suit "that she was now 22 years old " and capable to act in this matter forherself; that her first " husband Ullah Bukhsh having gone abroad and left her, " *his Brother had given her a Farighkhut in his name and she*

" *she had espoused Respondent.* This she urged she was " at perfect liberty to do; that no marriage could be for- " ced upon her against her free consent, and she totally " denied the contract with the present Plaintiff." Defendants in this suit likewise denied the contract " in toto," pleading the impossibility of their ever having sanctioned such a thing, because Lalun Buhoo was Plaintiff's Aunt. They exhibited the Farighkhut, which was passed under date 9th Posh Sood A. S. 1876 by Ubda Jeeva as an acquittance on the part of his Brother Ullah Bukhsh, for all claims he possessed to the hand of Lalun Buhoo under the contract of marriage which had passed between them. The grounds for granting it were stated to be " the advanced " age of Lalun Buhoo, and " a fresh agreement made for " the marriage of HER YOUNGER SISTER, *Fatima Buhoo,* " *aged* 14 *years, to* ULLAH BUKHSH, whenever he should " return from abroad." He resigned all right to prevent Lalun Buhoo's marriage with any other person, leaving her at perfect liberty to marry whom she pleased, and Jumal Hurjee and Hamud Fazil were declared to be Securities for his duly keeping this engagement, which they all signed.

Two witnesses distinctly proved execution of the contract by delivery by Plaintiff of five Rupees and his asking consent of Lalun Buhoo, who clearly and freely gave it.

Lalun Buhoo herself stated in Court that Plaintiff gave Rupees 5 as Earnest to her mother Defendant, who agreed that he should take deponent with him to Surat, where he lived; that deponent on hearing of it remonstrated, and the Earnest was returned to him in presence of Hamud Fazil, and another witness. She in this deposition added " that " her marriage with the present Appellant was made with " her own consent, and that she had no cause of complaint " at that moment." This was on the 21st January 1821. Neither when re-examined on the 11th March did she start any objection. The

The Court questioned four members of the Trade, Moohummudan Goldsmiths, whether if a Girl about 16 years of age were present and gave assent to a contract for her marriage executed with the usual forms, and confirmed by an Earnest of Rupees 5 given by her betrothed husband, and she as well as her mother afterwards refused to celebrate her marriage with that person, such contract could be annulled or not?

Two of them answered, that a Contract was not strengthened or fixed, by giving an Earnest alone, since the mode of celebration among them was for the mother of the Bridegroom, accompanied by five respectable members of the Trade to carry $5\frac{1}{4}$ Seers of Sugar, $2\frac{1}{2}$ of Raisins, $2\frac{1}{2}$ of Sugar Candy, and two Cocoanuts, to the house of the Bride's father, and to put a few pieces of Sugar into the Bride's mouth, and by this ceremony the contract was made, not by delivery of money. The next day the Bride's mother must send back half the things sent by the Bridegroom, to his house again, when he was to divide them out among the Punchayut, and the contract was then considered ratified. Even after this, it might be dissolved if the Bride did not agree. A Girl arrived at the age of 16 was considered her own Mistress, to do as she pleased, even to the breaking off a match, without any one having a claim against her, and this was agreeable to the Moohummudan Law, and many examples of it might be adduced.

The other two declared, that a contract executed in the manner stated in the Question could never be annulled.

Decree 27th Jan. 1820.

The Court found from the witnesses that Lalun Buhoo received from Plaintiff the Earnest of five Rupees and ratified the contract with him. But Lalun herself told a different story in Court. And the members of the Cast who had been examined were completely at variance upon the point, whether a Mungnee might be dissolved or not? Lalun

lun Buhoo was of the age of 16 years, and declared her unwillingness to keep the engagement with Plaintiff, to which indeed she affirmed she had never consented. It was not for the Udalut to enforce such a contract against the Will of a person of that age, and it was also agreeable to the Moohummudan Law, that a Girl of that age should marry whom she pleased, and it was therefore decreed that the claim of Plaintiff should be dismissed with Costs.

Judge's Court in Appeal, G. W. Anderson, *Judge.*

The grounds of the Appeal which the Plaintiff preferred, were founded on an alleged difference between the Decree and the true Laws of the Religion and Rules of Cast to which the parties belonged. He pleaded also that the proof in the Register's Court was clear that Lalun Buhoo had with her free consent betrothed herself to him, and her subsequent fraudulent and mercenary refusal would not by those Laws and Rules avail her.

The Court in the first place asked the Moohummudan Law Officers, whether after a Girl had of her own free will entered into a contract of marriage with a man, but when their consequent marriage was about to be celebrated, refused to marry him, such contract could be broken or not?

They answered, under the authority of the Hidayu, Futave Alumgeeree and Futave Ibrahim Shahee, that, if at the time of contract the Girl were willing, but not of perfect Womanhood and understanding; or if being of perfect womanhood and understanding, words signifying agreement and consent, had not passed between her mother, herself, and her proposed husband in presence of two witnesses, and if the Girl should afterwards be unwilling to celebrate the marriage, then the contract or writing was void; for this reason, that the consent of the woman is one of the points necessary to perfect a marriage.

Witnesses

Witnesses were called who deposed " that Lalun Buhoo " of her own accord pronounced to Plaintiff the words of " consent usual on occasions of marriage, calling him her " husband and declaring that they were man and wife." " This ceremony took place between them seated on a Cot " at the house of a woman named Muriam, who lived next " door but one to Jeevun Hashum" (her third husband, the Respondent in the present case). She was called into Court, but being blind declared she only knew of Lalun Buhoo's having been in her house by once hearing her voice. Other persons were called, but as from their evidence nothing satisfactory could be deduced as to whether a Mungnee might be dissolved, the Court persuaded the parties to refer the matter to arbitration. Two of the Members, those of each party, gave their verdict in favour of their own friend, and the Umpire decided that a Mungnee might be broken. The Register's Decree was therefore affirmed.

Decree 1st May 1820.

The Sitting Judge of the Sudur Udalut having recorded the above case, declared that he much doubted the justness of the cause which led to the decision of the Register now under Appeal, for it was apparent that at the time Respondent was betrothed to Appellant he knew from the Farighkhut that she was then previously engaged to another, namely to Ullah Bukhsh, which from the meaning of the Kaira Mouluvee's answer was enough to set aside the greater part, if not the whole of the present claim. The Farighkhut ought not however to be received as a valid document, since it was not passed by Ullah Bukhsh, but by his brother, who had no written Authority so to act, if he even really did so; indeed there was little doubt but that it was fabricated for the purpose of getting rid of the claim brought against Respondent by Jumal, her second husband.

The whole affair was viewed by the Sitting Judge as a very dishonest one, and the case was referred to a competent Court, for even allowing that Respondent had some right to be reimbursed,

bursed, he was not entitled to so much as had been decreed to him, and the award already passed ought in this respect to be amended.

The Court thought Respondent only entitled to recover the expense he might have been at in maintaining the woman to whom he was thus irregularly contracted, together with her mother and Sister. On this account Rupees 10 per mensem was considered quite sufficient, and the lower Courts' Decrees were amended by awarding only Rupees 60, with all Costs on that amount by Appellant, the rest being borne by Respondent.

Competent Court, J. Romer, *Chief Judge.* J. Sutherland, *Second Judge.*

Decree 3d July 1823.

N°. 107.

SIOORAM SUDASEO RANURE, Mookadum of Nate,..... } *APPELLANT,*

VERSUS

BHASKUR RAMCHUNDUR KOOLKURNEE,..... } *RESPONDENT.*

APPELLANT filed his suit in the South Konkun Udalut on the 1st August 1822, to recover from Respondent, the managing Karkoon of the Temple of Rameshwur in the Town of Giree (Gheriah the Pettah of Vijuyudroog) the sum of Rupees 525, due he said on the following account.

South Konkun Udalut, V. Hale, *Judge.*

In the village of Nate, in the Turuf of Vijuyudroog, where Appellant resides, is the temple of Nateshwur, which received by Appellant's account, an assignment from that of Rameshwur on account of the Siooratr Oochhao, of Rupees 100 per annum out of the Huqs and Puttees upon certain Villages, and the customs of the Turuf. The Koul or Deed of assignment was ratified by the Sooba, and the Nateshwur Pagoda had received its amount regularly every year until Tissa Ashur A. D. 1818 | 19, when the custom Farmer's Karkoon, gave a note for

Claim by Appellant, as agent of the Nateshwur Pagoda, for an annual Donation granted under Koul by the Rameshwur Pagoda of Vijuyudroog. Dismissed in both Courts.

for the amount, and Rupees 50 had been received also for Ashreen A. D. 1820 | 21. In 1822 Appellant filed a Suit against the Custom farmer which the Judge dismissed as untenable because the Rameshwur Pagoda, if any one, was responsible. The present claim was laid for two and a half year's allowance; for Rupees 100 more due from the Farmer of the Rajapoor Bundur, and Rupees 175 further loss.

Respondent answered that the claim was totally false, for no Koul was ever granted, as Appellant asserted, by the Rameshwur to the Nateshwur Pagoda; how therefore could it be affirmed by the Sooba? He admitted that Appellant had received Rupees 100 in Subba and Summan Ashur as Humeedar or security for another matter, but nothing either before or since, and a claim he made before the Collector at Bankot on the same subject was dismissed.

Appellant handed up first, what he called the Koul. It was a letter by the Kumavisdar of Giree to some person not named, without signature or date, and quite unintelligible, whether it was intended as a Koul to the village or a receipt in acknowledgment of the Koul by the villagers. The only notice of its probable date, was an entry on the back, of its receipt on the 15th Suffur, (Subba Ashur). He next gave in a Sunnud from Ramchundur Rao Muhadeo Soobedar confirming "the Koul" under date 17th Rubee ool Uvvul Subba Ashur, and granting this as an order for the levy of its amount from the customs.

Three orders in Subba, Summan, and Tissa Ashur, the last by the Honorable Company's district Officer, to the custom Farmer's people, for payment of the assignment to Appellant.

Respondent exhibited, an account of the different Sources of Revenue of the Rameshwur Pagoda, as fixed by the Government in Sullas Ashur A. D. 1813, total amount Rupees 1,324-3-81 per annum, and the Collector's order of 28th July 1821 declaring the Appellant to have no claim whatever for the sum now sued for.

For

For Appellant Gopal Anunt Gokle of Nate, deposed that the Koul was given on the application of Appellant, and that he got the Sunnud from Government confirming it. The first year Rupees 50 were realized, and he had heard Appellant say he received the rest direct from the Rameshwur. Knew the Koul to be in Respondent's handwriting.

Balkrishn Junardhun Damle *of the Soovurndroog Talooka,* happened to be present at *Vijuyudroog* in the month of Posh 1738, when Appellant put up the Petition to Rameshwur, and knew that he received the answer granting the Koul.

Bhaskur Bhut Natekur inhabitant of Vijuyudroog (town) was present when Appellant got the Officiating Priest (Poojara) of Rameshwur to put up his Petition for the Koul, which was afterwards wri tten out by Respondent.

On the part of Respondent, Dinkur Krishn Bhide deposed that he was Karkoon of the custom Farm for that part of the year Summan Ashur before the change of Government, and during that time paid nothing whatever to the Nateshwur Pagoda.

Balajee Siooram Pulsoole, Kurada Brahmun, proved that all the Receipts of the Rameshwur Pagoda were collected by the Kumavisdar and paid by him to the Pagoda, and that his order was required for any assignment like that in dispute.

Bajee Raghojee, Poojara of the Rameshwur Pagoda, swore that he or his brothers and no one else had officiated in the temple for the last 20 years, and he declared most positively that during this time Appellant had never petitioned for a Koul; he was sure of this because he never left the temple. The Revenues were realized by the Government, and paid by it to the Pagoda.

Sreedhur Govind Oogle, Government Karkoon, was present to take an account of the Siooratr Expenses in Ashreen A. D. 1820. Every thing was done by the order of the Kumavisdar and nothing spent without.

The

The Court applied to the Collector to ascertain from his records, what were the total Receipts of the Rameshwur Pagoda? Whether among the disbursements made for support of that Temple, any, and what, donation to the Nateshwur Pagoda was included? What number of Payments had been made on that Account during the last six years? and whether the Items of expenditure on Account of the Pagoda were made by the Collector's Officers, or whether the whole Annual allowance was paid to the Servants of the Pagoda, and an account of its disbursement rendered by them?

An Extract from the Duftur was handed up and shewed the total Income of the Pagoda of Rameshwur to be Rupees 1,494-0-39 including Huqs. Out of this none was assigned to Nateshwur, which had a Nemnook or fixed allowance from Government of Rupees 309-1-94. The District Officers collected the amount of the Huqs, and the Village Koolkurnee received it and made the disbursements, rendering an Account of them to the Collector.

The Court held that no claim could lie under a Document such as Appellant had exhibited, which was neither signed, sealed nor attested, and was quite unauthentic in every respect; and there was no proof of the assignment having been paid, according to the tenor of the Sunnud said to be founded upon it, since the accession of the Company's Government. The Suit was therefore dismissed with Costs.

Decree 5th Nov. 1822.

Sudur Udalut, Sittings at Ruttnagiree before, T. Barnard, *Fourth Judge*, Decree 5th April 1823.

The Sudur Udalut affirmed the Judge's decision on the same grounds.

N°. 108.

JUNARDHUN GUNES GOGTE.....APPELLANT,

VERSUS

KRISHNAJEE WASOODEO KANVINDE..RESPONDENT,

South Konkun Udalut, V. Hale, *Judge.*

Claim by Appellant mortgagee of a fourth share of the Koolkurn of Chindur, Prant Salsee to regain possession of the mortgage foreclosed but retained by a Coparcener of the mortgager,

Mortgage admitted, but tender of the mortgage sum within the term, and award of arbitration pleaded against the foreclosure.

Zilla Judge held the mortgage to have foreclosed. His decree reversed by the Fourth Judge of the Sudur Udalut on Circuit, but affirmed by the Collective Court.

THE Suit was filed on the 5th January 1822, by Appellant, Muhajun, Gaonkur, and Koolkurnee of the Village of Chindur in the Salsee Prant, to prove his title to retain a fourth share of the Koolkurn of that Village, formerly belonging to Respondent's Grandfather, Ramchundur Bapoojee Kanvinde, but by him mortgaged, with condition of sale, to Appellant's father (who held another fourth in his own right) in case of non-redemption of the mortgage by him within the term specified. It was stated in the Plaint that the mortgage was made by Ramchundur Bapoojee for Rupees 250, on the 1st Magh Sood 1720 or A. D. 1798, with a term of four years allowed for redemption. This term having expired, Appellant took possession of the mortgaged share, and in proof of its being clearly understood by Respondent's family that the sale had become absolute, he would prove that Swamitvu was paid to him by Ramchundur Bapoojee in 1723, 27, and 31, (or every fourth year, when the fourth shareholder would take his Palut, or tour of duty). But in the year 1739 or A. D. 1817 | 18 when it fell again to Appellant's turn to manage the Koolkurn in virtue of his holding this share, he was obliged to leave the Village on account of some dispute with the Chief of Bowra and the Kumavisdar managed it for him. In 1743, the first year after the change of Government that his turn of management returned, Respondent set up a claim, and disputed possession. The present action therefore was laid to oblige him to give it up. Appellant valued the fourth share at Rupees 725.

Respondent

Respondent in his answer did not deny the fact of the mortgage having been made, but pleaded that the sum advanced by Appellant had been tendered to him in redemption of the mortgage after the lapse of only two years. Appellant at that time said he did not want the money, and as they had probably borrowed it at an interest of 24 per Cent per Annum, whilst he only charged them 12, they had better return it to the person from whom they had borrowed it and let the mortgage stand until the full term had expired, as they might depend on his raising no objection to its redemption at any time, and he would let the office be managed by them as heretofore. Appellant had never received either Swamitvu or possession of the Wuttun, which was still open to redemption. Respondent added he had tendered to Appellant the amount due on the mortgage as settled by a Punchayut which sat in Summan Ashur, when first Appellant set up this claim, but Appellant had refused to receive it and he had no means of making him.

Appellant positively denied that any money had been offered to him within the term of the Bond for redemption of the mortgage, or that any Punchayut ever sat, or passed a decision on his case, and any such document Respondent might exhibit was false. He added that Respondent had no right to interfere with the possession, even if the mortgage were still redeemable, as he had no interest in this share and had disposed of his own to Keshow Lukshumun.

Respondent explained that a Punchayut was appointed once but failed, and again sat in a regular way under a Razeenama, given to the Punt Amatyu in Summan Ashur, and gave a decision awarding a right of redemption of the mortgage by Respondent.

The mortgage Bond was dated 1st Magh Sood 1720 Tissa Tissueen Miyat wu Uluf or A. D. 1798. Ramchundur Bapoojee Koolkurnee

Koolkurnee of Chindur Village thereby acknowledged receipt from Bhut Gogte of Rupees 250 formerly advanced to him for payment of the Government demands upon him, at an interest of 12 per Cent per annum to be repaid with the principal in four years. The writer now mortgaged his share of the Koolkurn in security for this debt, to be redeemed by him, or either of his two Brothers, or by one of his blood relations; should they fail to do so, the Wuttun to be considered sold There were seven witnesses to this deed.

Appellant also exhibited a counterpart agreement, or fresh mortgage Bond, executed to him by the same person and his brother Narayun on the 15th Asvin Sood 1731, acknowledging that the above Loan on mortgage had to that time remained unredeemed, and promising that they would let him retain possession until their next tour of duty came round in four years, when they would redeem it, or else the sale should be held finally closed, under the conditions of the former Deed.

A Deed of Sale under date the 12th Posh Vud 1738 by Ramchundur Bapoojee, to Appellant, in which, after premising that the promise of redemption had been often broken both by him and by his brethren, he declared that he had now of his own free will and pleasure finally sold the mortgaged Wuttun to Appellant, to have and to hold whenever the seller's year came round.

A Receipt from Narayun Bapoo for his accounts for the year Ashur 1809 | 10 lent by him to Appellant.

Original accounts of the Village for the year Arba Ashur A. D. 1813 | 14 in the names of Appellant and his brethren as Koolkurnees for that year.

Respondent's exhibits consisted of a number of orders from the Kumavisdar of the Punt Amatyu (who seems to have held this village) respecting the present claim.

The

The first was dated 15th Shuwal Ihide Miyaten wu Uluf A. D. 1800 | 1 and after recording an exparte statement by Respondent, similar to his present answer, granted him "confor- "mably to an agreement made in the Ruwulnath Pagoda, time "to redeem the mortgaged Wuttun whenever he had means, "enjoying the Wuttun in the mean time." Another of the 16th Jumadee ool Akhir Arba Ashur, or A. D. 1814 fining the Village for putting Appellant in possession.

An order of the 11th Rubee ool Akhur Khumsu Ashur, or A. D. 1815 to the Mookadum of Khareputtun, appointing him to sit in a Punchayut to be held for the settlement of this dispute.

A Razeenama, said to have been executed on the 11th Margsirsh Vud Summan Ashur or 3d January 1818 by the parties, Appellant and Respondent, to abide by the award which five persons should pass upon their case. It bore the name of Wittul Goomajee Koolkurnee and Gaonkur of Chindur as the writer.

Their Award was dated 14th Margsirsh Vud 1739 Ishwurnam the 27th Suffur Summan Ashur or 6th January 1818, only three days later than the Agreement to arbitrate, and was signed by all the arbitrators, and by eight Villagers. It professed to have been drawn up in the temple of Bhugvutee, and after recording the Deed of mortgage and conditional sale, with the subsequent dispute arising from Appellant's refusal to surrender it, "though Rupees 310 were offered him by Respon- "dent" and "a conversation related by Respondent as having "taken place between himself and Appellant," the arbitrators found, "that even if such a condition had been stipulated, the "Wuttun was not finally sold, for the relations in the first or "second degree, or the Heirs, might by Custom redeem it, and "Respondent had proved his assertion of offering redemption, "wherefore, Respondent should repay to Appellant the Princi- "pal with interest equal to it, after deducting former payments, "and receive back the Wuttun."

An

An order of the same date as the award, for carrying it into effect, determining the balance due to be Rupees 425, and dividing it into three instalments, one to be paid in that and the two following years, the last payment being at the end of Phalgoon 1741 or March 1820, on which date the Title Deeds were to be restored to Respondent.

Appellant called four witnesses, who proved the mortgage, and Appellant's possession under it till Summan Ashur, when the Respondent's tour of management came round again, and when Appellant commenced as usual to assume the management under the Title derived from his Bond he was obliged to abscond in consequence of some people belonging to the Chief of Bowra coming to seize him. One of these witnesses Buchajee Sudaseo Gunputye, who was also his Arbitrator, deposed that the Arbitration, in which he sat as the only Arbitrator on the part of Appellant, had been drawn up by order of the Government authorities in the absence of Appellant, and the order respecting it was issued at the same time. Another, Dhondjee Raool, named in the award as a witness to it, flatly denied that he sat in the Punchayut or signed the award, or knew any thing about it.

On the part of Respondent Gondjee Patara, one of his Arbitrators, swore that the tender of Rupees 310, on Account of the money advanced by Appellant, was made in his presence, and that the conversation took place as stated in the answer; and that Appellant carried off, unknown to Respondent, his yearly Accounts deposited in another person's house; he further deposed that the Razeenama was signed by both parties in his presence, and that they, and all the Arbitrators, were present at the Punchayut.

Krishnajee Dhondjee Patara deposed to tender of money by Respondent to Appellant, but could not say for what reason Appellant did not receive it.

The

The Court held in this case, that Appellant had clearly established his right to the fourth share of the Koolkurn of the Village of Chindur by the mortgage Bond and Deed of Sale, on the strength of which the fourth share sued for was decreed to him, his Tour or year of management being declared to commence on the 1st June next.

Decree 30th April 1822.

Sudur Udalut, T. Barnard, *Fourth Judge.*

The Appeal against this decision was filed by Respondent on the 26th June 1822 in the Sudur Udalut, and referred to Rutnagiree by Respondent's desire, that it might be tried there. It was laid upon the same grounds as the Appellant's defence in the Zilla Court, the fact that foreclosing of the mortgage was reserved by tender of the money within the term by Respondent, and refusal of it by Appellant, whereby the original character of the transaction as a mortgage was kept up, thus preserving to Respondent his right of redemption. He pleaded that his right of redemption had also been recognized by the Punchayut, and their award must be upheld.

The Court considered the issue to rest upon which of the two Deeds were to be considered most authentic, the Deed of sale or the award of the Punchayut; both had been imperfectly proved, but the principle of the award involved no possible injustice or loss to either party, being simply that Appellant should be paid what he had advanced, and give up the property, while the other Deed would deprive Respondent's family of their property. On these grounds the award was confirmed, and the Zilla Decree reversed by another, decreeing that Respondent should be put in possession of the litigated fourth share of the Koolkurn, on payment by him of Rupees 500 principal and interest of the Mortgage, Appellant bearing Costs of Suit.

Decree 10th Dec. 1822.

Sudur Udalut, Special Appeal, *Sitting Judge.* J. Romer, *Chief Judge.*

The Appellant was permitted to Appeal against this decision of the 4th Judge under the provisions of Section 37th of Regulation 7th of A. D. 1820, which declares, "that if the decree of "the Judge of Circuit, acting under the authority granted by "the two preceding sections" (authorizing him to try Appeals in

in the Southern Konkun) " affirm the decision of the lower Court, " no further Appeal shall be allowed, except the party cast be " desirous of carrying the suit before the King in Council; but " when his decision may have reversed the decree of the lower " Court, the party cast may prefer a special Appeal in the case, " to the Sudur Adalut *collectively* under the conditions prescrib- " ed by the Regulations for such Appeals, or he may Appeal " the case, in a regular manner, to the King in Council."

The Sitting Judge held, that neither the award nor the Razeenama had been yet duly proved, as they required to be in consequence of Appellant's denial of them, and of the contradiction in the testimony of the only two of the arbitrators who had been as yet examined respecting it. And of the only two witnesses to the award who had been called, one denied all knowledge of the award, and the other had not been examined respecting it. The authenticity of these two papers therefore required to be distinctly established, or contradicted, and proof was called for from the Zilla Court of the execution of the award, whether it was by order of competent authority, or in consequence of an agreement between the parties; but above all proof was required of the fact of its actual execution in its present form by the five persons who had signed it as arbitrators.

Appellant dying in this stage of the proceedings, his brother was allowed to continue the prosecution as Guardian of the Son of the deceased, a minor of 12 years of age.

The Zilla Judge's Return handed up the Depositions of ten witnesses. Two of the persons whose names were entered in the award as witnesses denied their signatures, and in the evidence of two others named, the grossest contradictions were apparent. Only one other person was examined to prove the Deed.

The rest of the depositions went to shew, that Appellant was obliged to abscond from Chindur and fled to Malwan from the Bourekur, in Summan Ashur, when it was his turn to manage

the

the Respondent's share of the Koolkurn, and that the award had been actually forged in Malwan in the house of Dhondo Ramchundur Surishtedar of the Udalut (afterwards dismissed for bribery.)

The Sitting Judge declared this evidence to be quite unsatisfactory in proof of the Award and Razeenama, and he would on these grounds alone have proposed reversal of the fourth Judge's Decree, but Appellant had further strengthened his case by presenting an attested Copy of a motion presented to the Zilla Court under date 23d March 1819 (being upwards of two and a half years before he was called on to defend the present Action in the Zilla Court,) in which he made mention of every thing since urged by him with the exception of the award, on which he was totally silent. As the Arbitration, if it ever took place, must even by Respondent's account, have occurred about a year and quarter only before the presenting of this motion to the Court, he could not have omitted to mention it, since it formed the strongest part of his case, and no plea of neglect or inadvertence could avail him. The case was therefore referred to a Competent Court.

Competent Court, J. Sutherland, *Second Judge.* E. Ironside, *Third Judge.* Decree 24th Feb. 1824.

The Court reversed the Decree of the Fourth Judge, and affirmed that of the Zilla Court, on the grounds that the Award and Razeenama were not proved, and that nothing had taken place between the parties to prevent the full operation of the terms of the Deed of Sale, under which Appellant's title was declared to be good and valid upon Respondent's fourth share of the Koolkurn of Chindur.

N°. 109.

Mr. JHUNKOO, Daughter of DAMODHUR KUHANDAS,..... } *Appellant,*

versus

BAPOO BHAEE MOHUNDAS and LULLOO BHAEE JUGJEEVUNDAS, MUZMOOADARS,..... } *Respondents.*

Ahmudabad Udalut, W. A. Jones, *Judge.*

THE Action was laid in the Zilla Court on the 26th September 1821, by Respondents, Muzmooadars of the Purgunna of Dholka, against Appellant, as Heiress to, and holding possession of, the Estate of her late Father, to recover from his Estate through her the sum of Rupees 3,000 balance of Fees due to them as Muzmooadars, which should have been paid by her father whilst in charge of the Goluk, or Treasury of Government Collections, at the Chubootra of Dholka, between the years A. S. 1855 and 1874, the year in which he died. The Fee was Rupees 300 per Annum, total Rupees 5,700, from which deducting Rupees 2,700 paid at various times, left the balance sued for.

Suit by the Dholka Muzmooadars, against the Heiress of the late District officer, for their Fees for a series of years.

The Fees due within 12 years decreed to be made good by the Estate of the deceased.

Appellant resisted the claim on the ground that she was not Heiress to her Father, of whose four daughters three were dead, but one had left two Sons, now both alive, and her Father during his life time had constituted them Heirs to all his property. She pleaded also for them that they were both Minors, and besides this bar to an Action against them, the claim was for personal property, and being of more than 12 years' standing, was not maintainable under the Regulations.

The Court held respecting the limitation of time that the present claim could not be in any way considered in the light of an account current between Respondents and the late Father of Appellant. The Fee should have been demanded by them annually, and if they did not procure payment they must put up

with

with the loss. The utmost that the Court could do, was to decree whatever might be proved to be due within the last 12 years, from date of the petition.

Respondents proved by twelve witnesses that Damodhur Kuhandas was in charge of the Goluk during the years specified in the Plaint, and that he levied the Mehta's expenses, being the Fee in dispute, and others, regularly during each of these years. He balanced his accounts of the Collections monthly, and furnished a yearly account to Government; the Fees of the Muzmooadars and Kanoongos were levied separately from the Traders. The duty of the Muzmooadar was that of keeping the accounts of the Chubootra at Dholka, and Respondent's Deputy in this duty was at one time a person called Gungadas, whom Respondent Bapa Bhaee's nephew, and latterly a person named Suntook Raee, succeeded. The dues paid to Damodhur were half a Rupee, upon every bundle of cloth, in which all Fees of every description were included. Two of these witnesses were Goomashtas of Damodhur, the rest Traders and Brokers in the habit of disposing of Goods at Dholka.

The Court held Respondent's right to the disputed Fees to be not only unshaken by Appellant, but proved by Respondent to be due, and proceeded to determine the amount still to be recovered. If Respondent's average were allowed, then Rupees 300 per annum from 1865 to 1873 inclusive would leave, after deducting Rupees 911 received from Damodhur in that time, Rupees 1,789. But by an account obtained from the Collector, it appeared that the total of fees due from A. S. 1869 to 73 inclusive, during which time the Sayer Collections had been made by Government, not farmed out, was Rupees 1,235-2-50, making an average of Rupees 251 per annum for the whole period. This was considered the fairest mode of reckoning, and therefore the sum of Rupees 1,348, balance after deducting receipts as above from Rupees 2,259, at that Rate for nine years (being that part of the 12 years which had elapsed up to Damodhur's death) was decreed

creed to be paid to Respondents with their Costs upon that sum from the Estate of Damodhur Kuhandas, Appellant's Costs upon that amount only to be borne by the Estate, the rest by Respondents, but not to be recovered from the Estate.

Decree 11th Dec. 1822.

Appellant maintained her former ground of defence, that of not being Heiress of her Father, and therefore not liable to be sued, urging further that the exact amount of Fees, even if any were due, had no where been shewn to have been fixed either by Government or by Damodhur so as to bear out either Respondent's claim for Rupees 300, or the rate fixed by the Judge of Rupees 251 per annum, and that Respondents had shewn no acknowledgment or agreement by her Father to pay the amount.

Sudur Udalut, *Sitting Judge.* J. Sutherland, *Second Judge.*

Respondents had likewise filed a cross Appeal objecting to the Rate fixed by the Judge of Rupees 251 per Annum.

The Sitting Judge observed, that with respect to the first point urged by Appellant, as the Decree ran against Damodhur's Estate, it mattered not whether she defended it as Heiress or Guardian of her nephews, since being the only grown up person in the family her rights must be supported, and Respondents were satisfied to have a Decree against the Estate, as there was sufficient property forthcoming to answer all demands. The point of Heirship need not therefore be discussed. The case having yet been exparte against Appellant, it was resolved to admit her proofs, and the suit was referred to Ahmudabad for a full examination of the accounts of both parties.

Each party produced Account Books, and others were obtained from the Collector, and from Lulloo Bhace Govindlal, the Kanoongo of the district. A difference of only Rupees 7 was found between these latter accounts, and the Zilla Judge thereupon gave his opinion, that the sum of Rupees 3,186-3 81, was found due from A. S. 1865 to Respondents' father, Mohundas, out of which according to Damodhur's books Rupees 967-2-50 had been paid between 1865 and 68, leaving a balance

lanee in favor of Mohundas of Rupees 2,219-0-31, and deducting further from this Rupees 356 which the accounts of Mohundas shewed to have been subsequently received, the balance now due to his account, or to Respondents, his Heirs, would be Rupees 1,863-0-31. Or if the payment of Rupees 967-2-50 were not considered sufficiently established, then deducting from the sum total, Rupees 911 (being Rupees 356 and Rupees 555 more against Mohundas in the Kanoongo's Books) the balance still due to Respondents would be Rupees 2,275-3-81. The Sitting Judge in giving his opinion on this case determined in favor of the first statement exhibited in the Zilla Judge's proceedings, and as this went to amend his judgment, the case was referred to a competent Court.

Competent Court, J. Romer, *Chief Judge.* E. Ironside, *Third Judge.*

The Court, in amending the Zilla Decree, fixed the amount due by the Estate of Damodhur Kuhandas at Rupees 1,863-0-31, and decreed to Respondent that sum with all Costs in the Sudur Udalut in this Appeal, together with all Costs in the Appeal filed by them, (and settled at the same time with the above) both their own and the present Appellant's Costs being adjudged to be borne by Appellant alone.

Decree 22d Jan. 1821.

N°. 110.

BHUWANEE SHUNKUR, alias BABA PADHYE VERULKUR..... } *APPELLANT,*

VERSUS

RADHABAEE, Widow of DHONDO PUNT PUTKEE OF CHIPLOON..... } *RESPONDENT.*

South Konkun Udalut. V. Hale, *Judge.*

THE Respondent filed her Suit against Appellant on the 29th October 1822, to recover from him the sum of Rupees 800, being Rupees 350 expense incurred by Respondent in procuring restoration to Cast from which she had been expelled through

through his means, and Rupees 450 damages for loss of Character thereby.

Suit by Respondent for damages for loss of Cast, caused by a defamatory paper written by Appellant. Damages awarded by the Zilla Judge. His decree reversed by the Sudur Udalut.

She said in the Plaint that Respondent had in the month of Magh forged a paper in the name of her son Martund, charging her with adultery with Naroba Naik Deooskur, in consequence of which she had been obliged to clear her character at an expense of Rupees 350 to the Punchayut before they would readmit her.

Appellant in answer denied that he had forged or written any letter on the subject, or raised any dispute, but the Punchayut had taken it up of their own accord. The damages were therefore not due from him, and it was equally clear that she had no right to sue him for her expenses, as they were incurred by order of the Punchayut ; and he offered to prove an Alibi on the day mentioned, when he was far away from Chiploon.

The paper forming the ground of accusation, bore date 1st Vyshakh Sood 1743, or 1st May 1821, (should be 2d) and was as follows. "To all the Brahmuns of the Kusba Town of "Chiploon, the deposition of Ramchundur Dhonddeo Putkee, "inhabitant of the Port of Chiploon. In consequence of your "desire that I should truly and faithfully state what I may have "known or seen respecting the adulterous intercourse com- "monly reported to have taken place between Naroba Naik "Deooskur, and Radha Baee Putkeen, I now declare, that "one day in the month of Magh in the middle of the night, "there was a disturbance as of rats eating our grain in some "baskets in the loft over head, whereupon I took Wittoba, "and Narayun, and Balum Bhut Wujha, with me, and get- "ting sticks and a light, began to mount the loft stairs, when "looking down I saw Deooskur getting out of the house in a "hurry, and I came down and went into the Veranda. I have "stated what I saw, and know nothing further. Witness my "signature in my own hand writing. Ramchundur Dhonddeo "Putkee of the Port of Chiploon.

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The above Ramchundar, alias Martund Dhonddeo, son of Respondent, appeared in Court and distinctly stated that he on that night saw his mother and Naroba Naik in a room together, and that the latter ran away. A meeting of about 200 Brahmuns was held, and Respondent expelled the Cast upon the evidence of Wittul Lukshumun (Wittoba above named) Witness was not present there but had heard of it from Baboo Bhut Oopadhye. He did go, but left the meeting immediately. Respondent had been readmitted to Cast, but it had not been arranged according to the Rules of their religion, and he did not agree to it. The proper mode of expiation was a Pilgrimage to Benares or other holy place, and distribution of alms, and purification, without which Respondent ought not to have been readmitted to Cast. He had not inquired whether the cause was proved or what fine Respondent was obliged to pay.

Pandoorung Bawajee Sathe deposed that Appellant wrote the paper in Respondent's Son's name, and that upon this paper a meeting of the Cast was held, and Respondent expelled. A Complaint was made to the Collector, by whom it was decided that Appellant was writer of the paper and that it was a falsehood, and an order was issued for restoration of Respondent to Cast. Another meeting was called by the Muhalkuree, the order read to them, and Respondent formally readmitted. It was not usual to investigate a matter in the Cast when already decided on by the Government, and they were satisfied that she would not offend in this way. Could not say what Respondent had expended in detail, but it might be between three and four hundred Rupees. Recognized the hand writing of the Paper to be that of Appellant.

Gunesh Narayun proved the Paper to be in Appellant's hand writing. Respondent might have paid 300 or 400 Rupees for readmission.

Another witness whom Respondent deemed essential to her case, was not found.

Appellant

Appellant called five witnesses.

Baboo Purusram Bhut Chitule, Oopadhye, declared that the Expulsion of Respondent was the act not of one but of many Brahmuns; could not say what particular person first set the Report of her loose conduct afloat, but at the meeting one Wittul Lukshumun deposed that he had seen Respondent and Naroba Naik lying on the same bed together, and it was this which caused her expulsion. Witness would not go to dine with her, as he was not a party to her readmission, and they were at enmity. Had never heard any thing about the Paper.

Juggunnath Narayan Kurkure believed he knew Appellant's hand writing, and recognized his signature on the Summons for Trial. Did not know the hand writing of the Paper shewn to him. Knew that the present action was the effect of a conspiracy against Appellant.

Bapoojee Krishn *Putkee* also knew Appellant's hand writing, and swore that the Paper was not in his hand.

Two other witnesses said the same.

The Court held it proved satisfactorily that Respondent had suffered an injury in consequence of the circulation of the paper exhibited by her, whilst its falsehood was established by the voluntary readmission of Respondent into Cast. It was proved by the evidence of Respondent's son and of Pandoorung Bawajee that Appellant wrote this defamatory letter, and modified damages, Rupees 100, with all Costs of Suit, were awarded to Respondent from Appellant.

Decree 21st January 1823.

The Court observed on this case, that the Paper was in the shape of a Deposition by Martund alias Ramchundur before the Punchayut held to enquire into his Mother's conduct, and although he had not been called upon in his subsequent examination before the Court to say whether he had authorized any one to write the Declaration to the Punchayut for him, he had

Sudur Udalut, Sittings at Ratnagiree before, T. Barnard, *Fourth Judge.*

yet

yet confirmed the fact mentioned in it, and declared that Respondent's expulsion was owing to the information given by Wittul Lukshumun. No proof had been adduced that the paper had occasioned Respondent's expulsion from Cast, nor that it was ever made use of, nor was it satisfactorily proved that Appellant wrote it, or if he did that it was not for the use, and with the authority of Ramchundur (and of the Punchayut?) There was great probability that it was made out for the purpose of being authenticated by Ramchundur as a formal deposition, in order to assist in the investigation, but from accident never made use of. Upon this view the Zilla Decree was reversed in Respondent's favor and his costs awarded to him.

Decree 4th April 1824.

N°. 111.

KHOOSHAL WUMULJEE,.....APPELLANT,

VERSUS

HEERACHUND PREMCHUND,.....RESPONDENT.

Ahmudabad Udalut, 1823 Nos. 1945 4663 1824. D. Greenhill, *First Register.*

THE case may be stated as follows. Appellant filed the Suit No. 1823 against Gokool Heerachund Choodgur (Bracelet maker) to recover from him Rupees 432-0-81 balance of an account in Ankra in Defendant's father's name, adjusted between them "Sam same hisab kurine" on the 2d Vyshakh Sood 1877 or 3d May 1821. Defendant did not appear or give answer, and the Register's Decree, which was given exparte on the 8th June 1822, provided, that the Defendant should pay Rupees 368-3-31 to Appellant, with Costs of Suit in proportion.

Decision by the Sudur Udalut on the claims of two creditors, each holding a judgment against the same debtor.

Not long after the filing of this suit, the present Respondent filed against the same Defendant, Gokool Heerachund, Suit No. 1945, to recover from him Rupees 783-0-27 due on a Bond for Rupees 771, dated 4th Phalgoon Sood 1878 or 25th

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February 1822, and bearing an interest of 3qrs. per Cent per month, in security for which the Defendant had mortgaged his house to him in Sam; the Defendant had become Bankrupt, and Respondent sued to have the house sold and the Proceeds paid to him in liquidation of his debt. The Defendant confessed the Bond, and a Decree was passed by the Register on the 25th May 1822, being fourteen days prior to that obtained by Appellant, awarding that the sum sued for, with all Costs, should be paid for out of the house, or if not sufficient that Defendant should be held personally responsible, but that no other property of his should be touched to make it good.

Appellant in execution of his Decree got a notice affixed on the house then mortgaged, and since decreed, to Respondent, that its Sale would take place on the 17th September 1822 in satisfaction of Appellant's Decree. Respondent therefore filed the Suit No. 4663 the subject of the present Appeal, on the 10th September, to prevent the sale, because his own prior Decree, gave him a direct and superior Lien on this very house, and which Decree he prayed might be therefore executed according to its tenor.

Appellant pleaded in defence, that their common defendant had delivered to him the original title Deed of the house before the mortgage to Respondent was effected, and had given him likewise a mortgage Bond for the house.

The Court finding Appellant's claim was given simply against Defendant Gokool Heerachund, whilst Respondent's Decree adjudged the claim to be recoverable from the said house pledged to Respondent, decided in conformity with that Decree, that Appellant should remove the attachment, unless he could satisfy Respondent's claim. Appellant bearing Costs of this Action.

Decree 19th Nov. 1822.

Appellant again urged his plea of the house having been made over to him in Lien before Respondent got the mortgage of

Sadur Udalut, *Sitting Judge.* J. Sutherland, *Second Judge.*

of it; that he held the original title Deeds of the house; and that he had in the lower Court preferred Durkhasts, with a view to prove his Lien, but they were refused.

The Sitting Judge found no mention of this on Record, but waiving the point, took up the question, whether Appellant should be allowed to go into proof of his claim to superior consideration in sale of the house, or whether the omission by him in his original Suit against Gokool Heerachund, in not pleading the mortgage, should be held to affect his claim so far as to amount to an abandonment of the point in the first instance, and a bar to its prosecution, after the similar claim of another creditor had been established.

The Sitting Judge was of opinion that the omission ought to prove a bar, but gave Appellant the benefit of a reference to a competent Court.

Competent Court,
J. Romer, *Chief Judge.*
E. Ironside, *Third Judge.*
Decree 9th August 1823.

The Court affirmed the decision of the Register, with the amendment, that the house of Gokool Heerachund might be sold by either party under his own responsibility, in effect as follows, That if Appellant proceeded to sale of the Premises, he should be answerable for any deficit in the proceeds of the sale, from the full amount of the Judgment held by Respondent against the house; should Respondent cause the house to be sold, he should pay any surplus of the Proceeds beyond the full amount of his own Decree, to Appellant. If the proceeds fell short, the sum thus recovered should nevertheless be taken as full satisfaction for his Judgment, Appellant bearing Costs of Appeal

N°. 112.

GOOLABCHUND PRUTAB, ...*Appellant,*

VERSUS

MANIKCHUND BHOODUR,.....*Respondent.*

Ahmudabad Udalut, D. Greenhill, *Register.*

A merchant's Books, must be taken, both for and against him.

ON the 28th March 1821, Appellant filed a suit against his brother Ubhechund Prutab, to recover from him the sum of Rupees 499 balance of dealings between them, consisting principally of Hoondees forwarded to his brother by Appellant when in the Dukhun, through the house of Gungaram Leeladhur of Sattara.

Ubhechund set up a counter claim against Appellant, and a principal ground of dispute between them was one of the Hoondees, for Rupees 300, dated 3d Chytur Sood 1876 or 17th March 1820, which Appellant claimed credit for, but Ubhechund declared he had not received from Appellant, but had bought from another person (the present Respondent.)

Appellant declared that by Ubhechund's desire he drew this Hoondee in favor of Respondent, with whom it was to remain until Ubhechund had arranged Appellant's marriage, on account of which its amount was to be expended, and that Ubhechund had received the Cash from Respondent.

Among other witnesses Respondent was called on the Trial between the Brothers, and produced his accounts for the year 1876, deposing on Oath that they were quite correct. With respect to the Hoondee he stated, that the amount was in Ant, and that he had settled its amount by payment in the current Rupees to Appellant. In his accounts Appellant was found credited with the Hoondee at Rupees 318-3-0 on the 15th Chytur Vud 1876 "by the hands of Ubhechund," and on the 1st Vyshakh Sood, the next day, debited with Rupees 352-1-0 being its amount with Exchange "paid to himself."

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In the Day Book also Ubhechund was credited on the 1st Vyshakh with Rupees 352-1-0, and on the day before, Respondent debited with Rupees 318-3-0.

The Court found, with respect to this part of the claim, that it was proved by Respondent's accounts that Appellant had himself received the amount of the Hoondee, wherefore his demand having been satisfied he had no ground of action, and his Suit for its amount was dismissed.

Decree 5th Sept. 1822.

R. Boyd, *Register.*

Appellant being thus disappointed of recovery from his brother, filed the Suit, the cause of the present Appeal, against Respondent on the 30th September 1822, to recover from him the amount of the Hoondee and its Exchange, with its interest, and his expenses in prosecuting his brother for it.

Decree 20th Nov. 1824.

Respondent declared that the transaction was as his Books shewed it. He had received the Hoondee from Ubhechund and paid its amount to Appellant himself, and could not be called on to pay it over again.

The Court held that Respondent's Books, if they were taken against him, must also be taken in his favor, unless some good reason for the contrary could be shewn; and Appellant professed his inability to produce any thing in proof beyond Respondent's own Books; wherefore the claim against Respondent also was dismissed as wanting proof.

Sudur Udalut, *Sitting Judge.*
J. Romer, *Chief Judge.*

The Court considered it doubtful how far the transaction between the Respondent and Appellant's brother was a bonâ fide one, so that the Entry in the Respondent's Book might be relied on. His evidence had the effect of clearing Appellant's brother from the debt, and now it was the means of clearing himself. Collusion between them was directly charged, and the Sitting Judge was of opinion there might be some collusion, but the books were so far regular as not to warrant an absolute rejection of the evidence they contained, whilst without rejection of them Appellant's claim could not stand. The case was referred,

Competent Court,

ferred, as one of some difficulty, to a Competent Court, which affirmed the Register's Decree against Appellant.

J. Sutherland, *Second Judge.* E. Ironside, *Third Judge.* Decree 24th July 1822.

N°. 113.

GOPAL BHIK Seth SONAR PAWUSKUR....APPELLANT,

VERSUS

GUNGARAM Seth SONAR DEOROOKHKUR..... } *RESPONDENT.*

South Konkun Udalut, V. Hale, *Judge.*

THE Cause was filed in the Zilla Court, on the 8th January 1822, by Respondent, to recover possession of the Khotee of the Village of Tunnalee, in Turuf Velumbe, and Talooka Unjunwel, valued at Rupees 600 per annum and two years produce, Rupees 200. He said the Khotee had remained in the possession of himself and family from the earliest times without intermission, until 1st Kartik Vud 1742 or 21st November 1820, when Appellant got an order from the Collector for putting him in possession. Respondent filed a suit No. 1225 for recovery of the Wuttun last year, but Appellant with one Chitule, and Joglekur conspiring together, contrived that Appellant should file a suit against Joglekur as No. 440, and got a Decree in his favor, and now therefore he sued Appellant to prove his title to be superior, and unaffected by the Decree which he had obtained against Joglekur.

Claim by Respondent for the Khotship of Tunnalee, Talooka Unjunwel. Decided by the Sudur Udalut in favor of Appellant, (who appealed from the fourth Judge's Decree) because he possessed the most authentic decision of the late Government.

Appellant in answer pleaded constant possession on his own part, and that Respondent neither was Khot nor ever had any right to the Office. His own suit against Joglekur was laid with a view to recover possession from him of the Village of which he had been put in charge by the Assistant Collector, in consequence of disputes between Appellant and the Sur Kumavisdar and the Villagers.

Respondent replied that Appellant had once before endeavored

ed to get hold of the Village but a Punchayut gave an award in his favor, in Sittu Ashur, when Appellant passed him a Khot Putr or acknowledgment of his claim being false, and he pleaded this must be held final.

A great number of orders, Receipts and Sunnuds, were exhibited on both sides, those of Respondent commencing with Isne A. D. 1801 | 2 and those of Appellant going up as far as Sullas Sittueen Miyat wu Uluf A. D. 1763 and having among them a Niwar Putr, or confirmation of a Punchayut dated 5th Rubee ool Akhir Khumsu Ashur or 17th March 1815. It was addressed to Appellant by Ramchundur Muhadeo (Nuggurkur) Sur Soobedar of Unjunwel, by whose orders and under whose eye the Punchayut had been held at Poona, and embraced every thing that had been formerly done, or agitated between the parties, recording their documents and evidence at length, from the earliest time of the dispute, and adjudging to Appellant the Khotee Wuttun as his inheritance.

Four witnesses called by Respondent from neighouring Villages all agreed in stating that he or his brother had held possession of the village for the last 15 or twenty years.

A fifth witness deposed, that the Khotee belonged to Respondent, who had held it from Isne Miyaten wu Uluf, until Summan, A. D. 1801 | 2 till 1807 | 8, ; then the Government kept it till Isne Ashur A. D. 1811 | 12. In Sullas Ashur Appellant gave in a Bond to prove his claim, but failed, on which it was given up to Respondent. But in consequence of the Punchayut in Khumsu Ashur, Appellant was invested with the Wuttun and held it during that and the next year, after which the Soobedar (Nuggurkur) restored it to Respondent under the former order of Sullas Ashur, in his favor.

On the part of Appellant only two witnesses appeared, and deposed that more than twenty years ago, Appellant had been in possession of the Khotee and held it then without dispute.

Possession

Possession then varied; Appellant had it on the change of Government, but had been since dispossessed on the dispute with Respondent.

The Zilla Judge was of opinion, that although the contrariety of Sunnuds and orders issued relative to the village rendered it impossible to attach validity to any one document, yet all the regular Decrees among them were in favor of Appellant. He held the most ancient records of the Khotship, and was proved to have had possession at a more remote period than Respondent. Nothing had been shewn by the latter to warrant Appellant's being deprived of the village, which he then held, and which was confirmed to him by dismissal of Respondent's claim.

Sudur Udalut, Sitting at Ratnagiree before, T. Barnard, *Fourth Judge.*

Respondent pleaded against this Decree, and the Fourth Judge reversed it, on these grounds that among the mass of papers exhibited not one was proved. Five witnesses had sworn to possession by Respondent for the last 20 years until the Collector interfered. Two that Appellant was in possession even before that time. The Zilla Decree, being founded on Appellant's proofs of Right being the most ancient, was in direct opposition to the simple and evident rule, that an Act of authority superseded all others prior to it; the only ground for any decision was the Right of Prescription, which being with Respondent, was confirmed to him by this Decree, reversing that of the Zilla Judge.

Decree 16th Dec. 1822.

Special Appeal to the Sudur Udalut at Surat. *Sitting Judge.* J. Romer, *Chief Judge*

The Chief Judge before whom this further Appeal came on at Surat as Sitting Judge, was of opinion that if any thing were proved by the numerous papers in the suit, it was, that to whomsoever the Right to the Khotship might belong, the actual possession of the Office for a series of years had not long remained with either party, and that nothing like a prescriptive right existed.

The only paper that could be called a "Decree" was the

Niwar

Niwar Putr in favour of Appellant. But Respondent had in the Zilla Court exhibited another Sunnud dated one year later, reversing this act, on plea that Appellant had not produced an old paper which he had bound himself to do; and Appellant had exhibited a third order dated the year after that, reversing the second order, and affirming the first, or Niwar Putr. The only document to be relied on was this Niwar Putr, as being the Act of an indifferent, and it was to be supposed, an impartial authority. The Judgment it recorded ought to have been final. That it was not so, only shewed the extreme uncertainty of Civil rights under the Muhâratta rule, and the carelessness of its Officers about maintaining consistency in their acts. The Sitting Judge thought that the acts of the Soobedar Ramchundur Muhadeo, subsequent to the Niwar Putr, ought not to be recognized either for or against Appellant, and being of opinion that the Niwar Putr in favor of Appellant ought to be held valid, he referred the case to a Competent Court for reversal of the Decree of the Fourth Judge of the Sudur Udalut.

Competent Court, J. Sutherland, *Second Judge.* E. Ironside, *Third Judge.* Decree 20th Dec. 1823.

The Court agreeing in opinion with the Chief Judge, reversed the Decree of the Fourth Judge, thereby affirming the Zilla Judge's Decree against Respondent with Costs.

N°. 114.

Mt. JETHEE, OOMUYA, RAEEKOONWUR and JUTTUN, daughters of JAEESHUNKUR JEEVRAM.. .... } *Appellants,*

VERSUS

Mt. SHEO BAEE, Widow of UMRESHWUR JEEVRAM..... .... } *Respondent.*

Ahmudabad Udalut, J. Pyne, *2d Register.* Morh Brahmuns.

RESPONDENT laid an action against Appellants on the 29th April 1822, to recover from them the sum of Rupees 147-2-0 being the value of half a house in the Village of Surkhej in

in the Dus Kurohee Prant, left by her father-in-law Jeevram, Grandfather to the Appellants, with whom she claimed an equal right to share, as derived from her late husband Umreshwur, younger brother of their father Jaeeshunkur. She said that Kukkoo Baee, the mother of the Appellants, held the house after death of her husband Jeevram and died about twenty two days before the filing the Suit. Appellants had lately sold the house, and she sought to recover her half share of the Proceeds by the present action.

Claim by a Widow in right of her husband, to share in his father's Estate with the Granddaughters. Dismissed by the Register, admitted by the Judge, and finally disallowed by the Sudur Udalut.

Appellants answered that by the custom of their Cast, Morh Brahmuns, a female left a widow during her infancy retained a claim only to the amount of her dower, and to no share of her Father-in-law's property whatever; now Respondent was left a Widow whilst a Child, and had received the amount of her Pulla twenty four years ago, wherefore by the said rule of Cast, she had no right to demand a share of her Father-in-law's property, which must descend entirely to them, his Grandchildren. And with regard to the sale, it had been expressly directed by their mother, to provide her funeral charges.

Respondent said there were two Turs or Sects in the Cast, of which Appellants took advantage to set up this plea of usage, but it would not be found to hold true. She admitted that she was young when her husband died, but pleaded that Minority could never affect a person's right.

The Court in this stage of the case asked the Shastrees, whether in a case like the present the Infant widow could claim and receive a share of her father-in-law's property, or not?

They answered (under the Text in the Mitakshura before quoted page 427.) It is a general rule that when any one dies (separated) without leaving a son, his wife should take his wealth, but this is only when her father-in-law's other son, if he had one, left no wife, daughters, or other (next Heirs). Should either a wife, daughters, or other Heir of the other son be in existence

existence, then on division of the Father-in-law's wealth she would receive only an equal share of it with the widow, and daughters, of the other son.

To four witnesses, members of the Cast of the parties, called by Respondent the same question was put.

They all said, that an Infant Widow would receive a share of her Father-in-law's property, and that examples of it were to be found, but they quoted none. Appellants put two particular instances to the Contrary, to which it was replied that the Widow in the one case had never come forward to claim her share, and in another, the father-in-law's brother was alive.

The Court found, that though the general principle of the Infant Widow being entitled to a share of her father-in-law's property was asserted, yet particular instances had not been pointed out by the witnesses, from which it was held that such custom did not exist in the Cast of the parties, and that Respondent consequently possessed no right to share in her father-in-law's Estate. There was no necessity therefore for taking evidence from Appellants to prove the contrary, and the Respondent's claim to share was dismissed as not proved.

Decree 10th July 1822.

Judge's Court in Appeal, W. A. Jones, *Judge*.

The Zilla Judge remarked, that according to the answer of the Shastrees, the Appellants' Mother, and Respondent, were equal Heirs to the father-in-law's property, and from the evidence of the Cast recorded, the Custom of the Cast agreed with this Law. The second Register's Decree had declared this evidence of no use because they had adduced no particular instance of the Custom, but the Court held that the custom of the Cast could not be set aside on such grounds, and his Decree was reversed in favor of Respondent with all her Costs.

Decree 1st Oct. 1822.

Sudur Udalut, Special Appeal, *Sitting Judge*, J. Sutherland, *Second Judge*.

The Appellants rested their claim to reversal of this decision, on the ground that the Law, on which the Zilla Judge had set aside the Register's Decree, did not apply to their case, because Respondent's husband being childless, and dying in A. S. 1854 before his father, who died in A. S. 1858, his Widow,

Respondent,

Respondent, lost all right to share by that Maxim of the Hindoo Law which left the Widow of one member of an undivided family dying without male issue entitled only to a maintenance from the other Heirs. That their Father Jaeeshunkur was in this case the Heir, and his Widow on his death in A. S. 1862 succeeded him and held the house for sixteen years till her death lately, when Appellants succeeded her by right of inheritance, and sold the house. They still adhered to their former plea, that the custom of Cast alone was sufficient to bar Respondent's claim.

The Sitting Judge observed that the case rested entirely on a point of Law which no Cast Custom could overrule, and the question proposed to the Zilla Shastrees did not sufficiently embrace all the features of the case.

The following was therefore proposed to the Sitting Shastree of the Sudur Udalut. A Morh Brahmun had two Sons, the youngest of whom died before his father, leaving an infant Wife but no issue. The father died a few years subsequent, and after him the second son, leaving a Widow and four daughters; his widow enjoyed the Estate for 16 years afterwards. Can the widow of the younger son claim a share of the house, the only property now left, and which the daughters of the other brother have sold?

He answered, the childless widow of the younger son had no right or title to share, because the eldest son and his father were both alive, and she was herself childless. If she had preferred a claim after the death of these two, when the widow of the other son was left with her four daughters, (the Appellants) it would have held good, because the propriety of the widows of a younger and Elder Brother both sharing in an estate, is admitted by the Shastr. But now the daughters (of the Elder Brother, Appellants) must inherit the uninvolved (Nirakshep) property of their Mother, and the widow of the other brother retains no right to share in the house, derived through their

Parents

Parents from their Paternal Grandfather, which they had sold.

The Sitting Judge finding from this exposition that Respondent had lost all title to a share of the house in consequence of allowing her rights to lie dormant so long, referred the case for reversal of the Zilla Judge's Decree in her favour to a Competent Court, remarking that the statute of limitations would also bar the claim independent of this law.

Competent Court, J. Romer, *Chief Judge.* E. Ironside, *Third Judge.*

The Court in the first instance further received the opinion of both Shastrees on the case as follows. Jaeeshunkur was left Heir to his Father, and was bound on taking his Estate, to maintain and take care of Respondent the Widow of his brother; on his death in 1862 his own Widow Kukkoo became his Heir and she was bound to maintain Respondent; in like manner after Kukkoo's death, her daughters (Appellants) were her Heirs, and they were bound to maintain Respondent and furnish her funeral expenses. But as Respondent was childless, and her husband died before his father, she was entitled to no share whatever in Jaeeshunkur's estate (or that inherited by him.) The Court decreed that Respondent under this exposition of the Hindoo Law had no right of inheritance in the Estate of her late Father-in-law Jeevunram. The Decree of the Zilla Judge was reversed and Respondent's claim dismissed with Costs.

Decree 9th August 1823.

N°. 115.

RAGHO LUKSHUMUN JUVUL.... ..... *APPELLANT,*

VERSUS

HOOSSUEN HUEDUR KHAN SUR GOOROW..... } *RESPONDENT.*

South Konkun Udalut, W. Stubbs, *Register.*

THIS Suit was filed in the South Konkun Court on the 27th August 1820, by Appellant as Khot of the Village of Bhudowle, in

in the Turuf Huwelee, and Talooka Soovurndroog to recover from the adjoining village of Punulje, of which Respondent was Khot and Representative, a piece of hill land forming part of a field named Kade Kantha, yielding an annual revenue of Rupees 12-2-0 to Government, which, as Appellant stated in his Plaint, Respondent had taken possession of by seizing the Crop, in Tissa Ashur. Appellant sought recovery of the ground valued at Rupees 102 amount of Suit.

Boundary dispute between the villages of Bhudowle and Punulje in the Soovurndroog Talooka. Decided in favor of Bhudowle, the Appellants in the Sudar Udalut.

Respondent suffered Judgment to go by default, and a Decree was given in Appellant's favor on the Oath of two witnesses, cultivators of the Appellant's village, who deposed that Appellant prepared the ground for cultivation and raised the Crop in Tissa Ashur, and that it was cut and carried off by Respondent and the same next year, and that the ground belonged to Appellant who had held it for the last twenty five years.

Decree 23d Jan. 1821.

The Respondent, in his Petition of Appeal (which appears to have been taken as his answer to the original Suit of Appellant, for no other written pleadings are recorded in either Suit) pleaded that the piece of ground in dispute belonged to his own village, and had been called "*Punulje Kada Kantha*" in all Sunnuds from the earliest times, which proved it to belong, not to Appellant's village but to his own, and he was ready to prove that he had always held it.

Judge's Court in Appeal. W.B Hockley, *Acting Judge.*

The Acting Judge permitted each party to file their exhibits, of which Respondent gave in thirty two, and Appellant twelve.

Appellant took exception to many of Respondent's Papers as not bearing *the above words* in the original writing, but manifestly interpolated to answer his purpose in the present action.

But the Court declared it to be a frivolous and unfounded objection.

The Documentary proofs exhibited by Respondent were considered by the Court to be undeniable, but the particular one calling for a decision in his favor, was an order from Balajee Lukshumun,

shumun, from the Fort of Soovurndroog Turuf Huvelee of Jaffurabad (the town of Hurnee) to the Village of Punulje, stating that "Vinayuk Punt Punditthad been deputed to take charge of the "Village then under attachment, but he, Ballajee Lukshumun, "having since satisfied himself from inspection of the Papers of "Futteh Khan Sur Goorow (one of Respondent's family) that Ka-"da Kantha belonged to the Village of Punulje, he had ordered "that Futteh Khan should be put in possession of the ground "in dispute.

The latest Sunnud exhibited by Appellant was one of the 19th Mohurrum Subba Ashur or 21st December 1816 from Sudaseo Mankeshwur Soobedar, being a confirmation of a decision by a Hoozoor Punchayut on the merits of the claim to the land in dispute, which was declared to belong to Appellant, on the grounds of a Farighkhut formerly given by Futteh Khan, and uninterrupted possession of the land by Appellant for some years afterwards.

The Court remarked that the nature of the Appellant's defence was nought but a denial of the authenticity of Respondent's documents, and vain attempts to prove interpolations, but they had all failed. Respondent had clearly admitted all Appellant's documents to be true and correct, but produced Sunnuds himself of a later date, by which he was held to have entirely proved his claim. The exparte Decree against him was therefore reversed in his favor.

Sudur Udalut, *Sitting Judge.* J. Sutherland, *Second Judge.*

The Sitting Judge remarked, that it was fortunate for Appellant that Respondent had unequivocally admitted the validity of his exhibits, and it also materially assisted the Court in coming to a decision. In this view the Sunnud exhibited by Appellant from Sudaseo Mankeshwur acquired such validity as a later act of competent authority only could annul. The Sunnud in Respondent's favor from Ballajee Lukshumun had been held by the lower Court to have this effect, but it was the act of an inferior officer, for Sudaseo Mankeshwur was Soobedar

until

until the capture of the district in December 1817, when the fort of Soovurndroog itself was taken, and Ballajee Lukshumun appeared only to have been Killedar of the Fort itself, and probably had no jurisdiction whatever beyond it. If really executed, therefore, it still was the act of an inferior Officer, who could have no right to interfere with that of his superior. On these grounds reversal of the Zilla Judge's Decree was recommended to a Competent Court, which accordingly set aside the Zilla Judge's Decree and affirmed that of the Register.

Competent Court, J. Romer, *Chief Judge.* E. Ironside, *Third Judge.*

N°. 116.

MOOLJEE KAMESHWUR,.....APPELLANT,

VERSUS

BHUGWANDAS WULLUBHDAS,.....RESPONDENT.

Kaira Udalut, J. Vibart, *Act. Register*

ON the 27th June 1821 Appellant filed a Suit against Respondent for Rupees 150, due on the following account. Appellant, a merchant of Sankhej in the Duskurohee Purgunna advanced to Respondent and Koober Shunkur, Patel of that Village, with other Bhagdars, the sum of Rupees 2094 on the following bond, dated 3d Phalgoon Sood 1874 or 10th March 1818.

Section 6th Regulation 1st of A. D. 1814, and Section 11th Regulation 3d of A. D. 1819, held not to affect the validity of a Bond bearing interest of more than 12 per Cent, if executed in the new districts, whilst under the Gaeekowar's rule.

"The Patels of Sankhej, Patel Kooberdas Shunkurdas, "Bhugwan Wullubhdas, Treekam Withuldas, Shumbhoo "Veljee, and others of the same family representing the whole "village, pass this writing to Patel Mooljee Kameshwurjee, to wit. "We have taken up on account of the village Rupees 2094. The "interest shall be paid at the rate of two per cent per month by "us jointly or severally, under the rules of instalment usual in "the Purgunna. The Security for repayment is the Barot "(Bhat) of Kunej, Wujjoo Deokurn; we will pay the daily "expenses of a horseman for collecting the money."

Appellant had received the whole of the principal but Rupees

pees 304-3-0, and interest 145-1-0. He sued Respondent alone, as at his option to do by the term "jointly and severally" for Rupees 150, as his third share of this balance, leaving out altogether Shumbhoo Veljee, the fourth person named in the Bond, under the same power of choice. The Register dismissed the suit on the grounds that the Bond on which Appellant sued bore a higher rate of interest than 12 per cent per annum, by which flaw his claim must be dismissed under the provisions of Section 6th of Regulation 1st of 1814 (being a Regulation for determining the rate of interest on money in the provinces subject to the Presidency of Bombay) which declared that "Bonds or instruments which may appear to have been given after the expiration of twelve months subsequently to the issue of this Regulation, for the Security and evidence of debts, and bearing a higher rate of interest then twelve per centum per annum, shall not be recoverable in the Courts of Udalut." In thus dismissing the suit, all costs were likewise awarded against Appellant.

Decree 18th August 1821.

This decision was affirmed on appeal by the Judge, who quoted this 11th Section of Regulation 3d of A. D. 1819. "The Laws and Regulations established for the internal ad- "ministration of the territories under the Presidency of Bom- "bay, and for the collection of the Revenues, are hereby de- "clared to be in full force and effect within such parts of the "late Cessions, as are situated North of the Myhee and "lying within or annexed to Surat Athaveesee, from the 6th "of June 1817."

Judge's Court in Appeal, J. D. Devitre, *Judge.* Decree 17th July 1822.

The ground on which Appellant claimed reversal of these decisions was, that at the time of the execution of this Bond the Village of Sankhej belonged to the Gaeekowar's Government and was not ceded to the Hon'ble Company until 2d Shravun Sood 1874, or 4th August 1818. That Regulations passed by the Honorable Company for their own districts could not be applied retrospectively to a transaction which occurred before they obtained jurisdiction in the place where it happened, and therefore

Sudur Udalut, Special Appeal, *Sitting Judge.* J Sutherland, *Second Judge.*

fore that a Bond executed under the Gaeekowar's Government bearing interest of Rupees 2 1 per Cent per Annum, a rate there common, could not be declared null under the provisions of the Regulations quoted by the Zilla Courts, but was good and valid.

The Sitting Judge, after comparing the date of the Bond with that laid down in the Regulation quoted by the Zilla Judge, and remarking that it was notorious that the Village of Sankhej was dependant on the Huwelee of Ahmedabad, and was not ceded by his Highness the Gaeekowar until some months after the Bond was executed, that is, until the rains of 1818, recorded his opinion that under these facts common justice demanded that Appellant should gain relief from the operation of a law that never ought to have extended beyond the date on which the place was ceded. The law was defective, and the provisions of Regulation 1st of 1814 should not be made applicable to this Case. He referred it to a Competent Court for reversal of the Zilla Courts' Decrees, adding that another objection might still be made to Appellant's present suit, that it was irregular as lying against one instead of four persons in whose name the bond ran.

Competent Court,
J. Romer, *Chief Judge.*
E. Ironside, *Third Judge.*
Decree 14th August 1823.

The Court took the following view of this suit. The point of law upon which the case turned was the period at which the operation of Section 6th Regulation 1st of 1814 might be considered to commence. The place was not ceded to the Company till about the middle of 1818, but by Section 11th of Regulation 3d of 1819 the Regulations were directed to have effect in this place and others as lying North of the Muhee from the 16th June 1817. The Regulation of 1814 however only proved that Bonds given after expiration of twelve months from the issue of that Regulation, and bearing more than 12 per Cent interest per annum, should not be recovered in the Courts. If it were deemed just and necessary to give a twelve-month's notice of this law to the public forming the community of the older possessions of the Company, the same reasons existed for continuing so fair a provision to people just coming under

a new rule and authority, differing in many essential matters from that they had lost. Under this construction, the operation of Section 6th of Regulation 1st of 1814, would not commence until the 6th June 1818, and the Appellant's Bond being dated 10th March 1818, was not affected by the Law. Upon these grounds, so much of the Judgment of the lower Courts as dismissed the Appellant's claim under the provisions of that Regulation of 1814, was reversed, but Appellant was nonsuited on the grounds of his action being laid against one instead of the four parties who jointly? passed the Bond to him, leave being reserved to him to sue them all in a fresh action.

N°. 117.

PUNJEE PHOOLCHUND.....*APPELLANT*,

VERSUS

RAEECHUND ROOPCHUND, Heir of BHUGWAN ROOPCHUND Seth, and ICHHARAM MANUKCHUND and others, of the Cast of the Beesa Sreemalee Bunyuns of Ahmudabad.... ..... } *RESPONDENTS.*

Ahmudabad Udalut, W. A. Jones, *Judge.*

ON the 13th August 1820 Appellant filed his Suit against Respondents, laying his damages for expulsion by them from Cast, in the sum of Rupees 10,000.

Decision on the right possessed by the Tuppa Sect of the Sreemalee Bunyuns, for professing the tenets of the other, or Dhoondeea, Sect of the same Cast.

He thus stated his case. He was an inhabitant of the Village of Sanud in the Dholka Purgunna, and belonged to the Respondent's Cast, which was divided into two Sects, called Dhoondeea and Tuppa; for seven generations his family had held the tenets of the Dhoondeea Sect and Respondents belonged to the Tuppa Sect. From the earliest times, however, the Tuppas used to come to his house and partake of his Feasts, and his daughters were also married among the Tuppas. In A. S. 1871 the Respondents turned him out of the Cast without any fault on his part,

part, promising that if he would forsake the tenets of his own pursuasion and knock down his Upasura, (the Dhoondeea Temple at Sanud) they would take him back into the Cast. Appellant told them that he could not forsake principles which his Fathers had kept and followed for so many years, and as for the Upasura it was common to many of his own persuasion besides himself and he could not meddle with it. Since the establishment of the Company's Government, Respondents had drawn up a paper forbidding any one to eat with Nuhanchund and Jeevraj, or their families, or to sit down together with them to eat. Appellant's brother Lehura Shah had upon this filed a Suit against them and a Decree had been passed in the Register's Court permitting Appellant's family to eat with the Cast, upon which the Tuppas had drawn up another Paper agreeing not to conform to that Decree. Appellant having thus failed in all his endeavours to obtain redress, now sued them to recover damages and obtain an order upon the Cast to readmit him.

Respondents answered that the subject of this suit had already been fully investigated in more than one case in Court, but they would explain it now. It was not true that Appellant's family for seven generations had been Dhoondeeas, for one of them, named Nuhanchund Santeedas was of the Tuppa Sect, and it was long unknown to them that he held the tenets of the Dhoondeeas. As soon as it was discovered he was turned out of their Cast as well as Appellant and all his family in A. S. 1871. They called on Appellant to prove that he himself had eaten with them since then, or they with him, or that his family had. He had since his first expulsion agreed to adopt their tenets, and had perhaps in consequence been allowed to marry his children in their Sect, for it was a rule in the Cast that no ceremony in which the Chandla was duly applied by a Joshee should be annulled, and the Cast had given permission to celebrate the subsequent marriage. They would however prove that Appellant's brothers and Uncle had not long ago married their daughters

ters to persons of the Dhondeea Sect, and if this were permitted with impunity the Tuppa Sect would not long subsist. Appellant had only been turned out of Cast on his lapse into heresy being discovered, for the Dhoondeea tenets were very widely different both from those of the Tuppas, and from the Hindoo Religion itself, and the Dhoondeea practices were very improper. Respondents had no objection to Appellant's retaining his present principles, but if he did they could not hold Communion with him, for in Cambay there were many followers both of the Tuppa and Dhoondeea Sects, and the two Sects there were quite distinct, but there was not a single Dhoondeea among all the members of the Cast at Ahmudabad.

Appellant urged in reply that the two Sects belonged to the same Cast of Sravuk Bunyuns, and there was no reason whatever to suppose that they lost Cast by eating with the other Sect in the same manner as they would be liable to do for eating any forbidden thing. Within these few years Swamee Narayun who had set up a new Sect, was followed by persons both of the Dhoondeea and Tuppa Sects and by many other Hindoos both Brahmuns and Bunyuns, yet the Casts to which these people belonged did not expel them for it. He was at the same time ready to prove that the Dhoondeea tenets had been long followed by his family, and called on Respondents to shew that he had ever offered to return to their Sect.

Respondents declared that the Dhoondeeas were to them the same as men of a low Cast, and that the touch of a Dhoondeea would pollute any Hindoo, and required an ablution to efface it, for this reason, that the religious tenets of Hindoos and Sravuks forbid them to touch a woman during four days in her courses, and ablution both of body and clothes was enjoined for a breach of this Rule, which the Dhoondeeas did not adhere to. Again the Juttees or Priests of the Dhoondeeas ate with the inferior Casts, of Bhaosar, Koonbees, and others, whose food and water it was forbidden to taste; that they even ate from the hands of women in their

courses

courses, and did many other things contrary to the Shastr, rendering themselves even more obnoxious than if merely excommunicated. There were many other examples of persons expelled for the same cause, who had been taken into the Sect again on their renouncing the Dhoondeea tenets. As for Swamee Narayun's principles they did not differ from those of the Hindoos, and were founded on the Shastr without permitting any improper practises. The tenets of the Dhoondeeas could not be reconciled either with the six Shastrus or eighteen Pooranus, and they not only kept up the aforementioned and other disgusting practises, but were worse than Moosulmans. Respondents said they could not exhibit any writing of Appellant respecting his agreement to forsake the Dhoondeea Sect, because no writings were ever taken in matters of religion. They would however shew that he had given to their Gour food, clothes, and money, which was a proof that he had been of their Sect formerly, and they would further prove that he consented to return to it. Appellant had asked how they could consider as pure the daughter of a man with whom they would not eat. They instanced the Dusa and Beesa Porwar Bunyuns who intermarried but did not now eat together. When Appellant's family was first excommunicated in St. 1856, the whole Cast was called up by the Gaeekowar's Diwan and an order given to the Cast to re-admit the family, but they then refused to do it, and Appellant was finally obliged to give up the point.

It appeared that six other suits had been filed in the Court by the parties, and were all pending in Appeal before the Judge when this original suit came on for trial. The first of these was in every respect similar to the present, and was laid by Appellant's Brother Lehura against the Cast. The Acting Register Mr. Greenhill after a long investigation decided that as the two Sects had intermarried and dined together, the Defendants, the Cast, should eat with Lehura, the Plaintiff, and should summon him to their feast, and if they omitted to do so

they

they should pay the damages sued for, paying also his costs and their own. Of the remaining five suits, four were decided on the principles of the Decree in the fifth, in which Lehura, the Plaintiff, got one fifth of the damages sued for on account of the loss of character he had sustained, but no more, because he had not sued the whole Cast, it being at the same time held that the Plaintiff had been expelled without just cause, " he being a Dhoondeea but no worse."

The Judge resolved to go into the merits of the subject in this original Suit, and in his Decree also to form his decision on the Appeals in the other six Suits.

The points at issue were, whether in a Cast in which there prevailed two Sects, one Sect had the power to exclude the other from reciprocity in privileges common to the Cast; whether the one Sect could deny to the other intermarriage with it and forbid intercourse of dinner &c.; and whether one Sect could make a general law of exclusion to the other. It was essential to understand in what the two Sects differed, for which purpose each party was called on to bring a Priest of their own persuasion.

Jethmul, a wandering Juttee deposed, that he had known Appellant's family for five generations, and that his Father, Grandfather, and Greatfather were of the Dhoondeea persuasion; the Dhoondeea and Tuppa Sects in all parts of the Country ate together like all the other Casts of Sreemalees, and they intermarried. Witness said the difference between the two Sects arose first from the Dhoondeeas confining themselves to one of the Books containing the sayings of Muhaveer as their guide on all matters of Religion, whilst the Tuppas, though they considered it an authority, admitted of other Books. The Tuppas paid adoration to Idols, looking on them as God, whilst the Dhoondeeas did not mind them. The Juttees, or Priests of the Tuppas, lent out money at interest, and begged money from the Tuppas, whilst the Dhoondeeas neither kept any money,

money, nor begged it. The Books by which the Dhoondeeas were guided were in all thirty two. Thirteen more than these were admitted by the Tuppas but denied by the Dhoondeeas because not mentioned in those admitted by them. The Dhoondeeas did not worship the image of Boodh which the Tuppas did, and the Rama Boodh Idols were set up by the Tuppa Sect. Witness said that Nihanchund, the person first expelled, had long been of the Dhoondeea persuasion, but he could not say out of which Sect he had taken his wife. On being asked whether no mention was made of Images in the 32 books, he said there was not to be found in any one of them an account of the setting up such and such an Idol, and the building of a Temple &c. The first of the Thirteen Tuppa books were not mentioned in the other two, and the five last were not now in existence. The Dhoondeeas did abstain from women for three days whilst they were in their courses. Witness not having been at Cambay could not say whether the two Sects at that City ate together. He had never seen it at Ahmudabad but had heard they ate together. He declared that the Custom of putting a cloth over their mouths when they went out of doors was enjoined in their books.

Nurseerukh Manikchund, said he knew that Appellant's father and Grandfather openly followed the Dhoondeea tenets. The two Sects ate together at Sanud, and wherever witness had been he observed the same. The Girls of the Appellant's family had married among the Tuppas. The Dhoondeeas did not eat with the Beesa Sreemalees because they were not of the same Cast, but all the Bunyun Cast at Cambay sometimes ate together; could not say whether the Dhoondeeas gave money at the temples or not. Witness had never made a vow of abstinence.

Veervujuyu Shoobhvujuyu, the Gour of the Tuppa Sect at Ahmudabad, deposed that he worshipped the Idols of Jeen and Punch Ungina, and obeyed all the Rules laid down in the Book Nuddee, among which the Worship of Idols was enumerated,

rated, and that the Tuppas' Sect admitted every thing mentioned in the Shastr. He said there were about forty houses of Dhoondeeas at Cambay, and they neither ate nor intermarried with the Tuppas, nor held any intercourse with them. Appellant's Father and Grandfather professed the Tuppa principles, and if they held those of the Dhoondeeas it must have been privately, for in A. S. 1802 Nanoo Shah (Nihanchund) accompanied him to one of their Temples and stayed there a fortnight, and used to give clothes and food to the Tuppa Gours. Witness had never seen the two Sects eat together at Limree or Wudwan. He admitted that there was an Upasura at Sanud in Nihanchund's time, but did not know that person built it. The Dhoondeea and Tuppa Sects in the Dusa Sreemalee Cast ate together, but the Beesa Sreemalees of Ahmudabad were all of the Tuppa persuasion. In the Dusa Porwar Cast about 100 families were Sravuk; the rest, followers of Vishnoo, and they had separated in every thing.

Respondents now handed up a Letter from the Tuppa Sect at Cambay to the Respondent at Ahmudabad respecting the case of one Unoopchund, whom they had turned out for engaging himself to the daughter of Nihanchund Santeedas of Sanud, Appellant's grandfather, but whom they had readmitted on his paying a fine of Rupees 525, and given him permission to celebrate the marriage, since the Chandla had been put on, but with an injunction to give up all intercourse with his bride's family and sect. This letter was dated 1st Bhadrapud Sood A. S. 1874 or A. D. 1818.

Respondents offered to prove that Nihanchund's Brother Jeevraj performed certain ceremonies in the Tuppa Temple in Ahmedabad, and that Nihanchund's relations up to St. 1870, contributed like other people to the Gour in the Upasura at Sanud who was a Tuppa. Appellant denied performance of the ceremonies at the Temple, but defended the gifts to the Gour, as charity was enjoined by their tenets. He admitted that persons

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of the Dhoondeea Sect might give money at a Tuppa Temple as other Bunyuns would, and again offered to prove that several persons of the Tuppa Sect at Ahmeda bad had married into his family.

Respondents said that of course there was no objection as long as the family were supposed to be of the Tuppa persuasion, but that all intercourse had ceased as soon as he was found out.

A Tuppa named Hookmchund said that Appellant, his Father, and Grandfather, were of the Dhoondeea Sect, but visited the Tuppa Upasura also, and witness was connected with them by marriage. Appellant, who was witness's cousin by the Mother's side, did not attend witness's marriage as he was not in the City. Witness gave the usual donation to the Cast when Appellant was expelled in St. 1870. The Ahmudabad Beesa Sreemalees had no Dhoondeeas among them. Appellant's Sister was married to a Tuppa at Cambay. In St. 1866, the Cast at Ahmedabad attended a Funeral Feast given by Appellant at Sanud.

Juohurchund, another Tuppa, said his mother was of the house of Jeevraj, the Brother of Nihanchund. Appellant's Sisters and daughters were married in Ahmedabad, and he had still three daughters contracted but not yet married. His father followed the Dhoondeea tenets, and frequented the Tuppa temples. In the Dusa Porwar Cast the two Sects do not intermarry, neither do the Sravuk (or Jain) and the Mesree (or Hindoo) Members of that Cast eat together. The Beesa Sreemalee Cast recognized no Dhoondeeas. The Dusa Sremalees were split into six Sects, the Dhoondeea, the Tuppa, and four others, all of whom ate together. The Custom of the Cast at Ahmudabad and Cambay was the same.

Goolabchund, a Dhoondeea, said the Dusa and Beesa Sreemalee Casts did not eat together, but the Six Sects in his, the

Dusa

Dusa Cast, all ate together, and he declared that Nihanchund openly professed the Dhoondeea tenets; could not say whether there were Dhoondeeas among the Beesa Sreemalee Cast or not.

Raeechund, a Tuppa, married Appellant's Sister, having known four years beforehand that her brother was both a Dhoondeea and Tuppa, and this was known besides to at least half the Cast, who were present at his marriage. Admitted that his marriage was forbidden in consequence, and that there were no Dhoondeeas in the Beesa Sreemalee Cast at Ahmudabad.

The Court remarked that in a Deposition given by this witness in one of the former suits he only said that Appellant followed the Dhoondeea tenets.

First.—Respondents now produced three papers; a Furman bearing the seal of Shah Juhan, and dated 27th Rujub A. H. 1054 or A. D. 1638, in the eighteenth year of his reign, setting forth that a complaint had been made by the Looka Muhajuns of Ahmudabad against Santeedas Soordas and other Muhajuns, for refusal to intermarry or eat with the complainants, upon which it was decided "that as it was agreeable both to law and "custom that all such intercourse should depend on the plea-"sure of both parties, their future intercourse must be regulated "by the mutual convenience of both sides, and that no attempt "on the part of either to compel the others to conform to their "wishes was to be permitted, but if the dispute continued it "must be determined by the Law."

Second.—A Certificate signed by forty seven members of the Beesa Sreemalee Cast at Cambay, declaring that the Tuppa Sect at that place was separate both from the Dhoondeeas and Lookas in their meals, whilst the two latter Sects ate together. That even at a public dinner of the Nokarsee or Jains, when the five Sects of Tuppas, called the Beesa Sreemalee, the Beesa Porwar, the

the Dusa Ooswal, the Beesa Ooswal, and the Dusa Sreemalee, all ate together, the Dhoondeeas and Lookas were excluded from it, as well as from the single feast of the Beesa Sreemalees, neither did the Tuppas intermarry with them. They said there were about Seventy five families of Dhoondeeas and Lookas together at Cambay. The certificate concluded with mention of the case of Unoopchund who was readmitted into the Cast on paying the fine and permitted to celebrate his marriage, because a ceremony confirmed by fixing the Chandla on the forehead was never permitted to be annulled.

Third.—An Extract from an account Book kept by the Priest of the Tuppa Upasura at Sanud of the offerings and Fees paid there, which shewed that Appellant and his family had paid several sums of money to the Tuppa Temple between the 4th Vyshak Sood A. S. 1840, and the 2d Kartik Sood A. S. 1854.

Jetha Tarachund deposed that he seceded from the Dhoondeea Sect in St. 1871. The Dhoondeea Sect had always kept Temples at Sanud. Appellant's family had been Dhoondeeas for seven generations. The Sects used to eat together until St. 1871. Witness proved by various examples that up to St. 1871 the Tuppas and Dhoondeeas both of Ahmudabad and Sanud used to sit down to feasts together; that Dhoondeeas used on particular occasions to visit the Tuppa Temple but not at all times; that Tuppas and Dhoondeeas had intermarried all over the Country; that Appellant had given money to the Tuppa Temple of Wuja Ansoor, though he retained his Dhoondeea principles also; and that the Tuppa Sect at Cambay is separate from those of the Dhoondeeas and Lookas, which are united.

Seven other witnesses were called by Appellant further to substantiate the facts that the Dhoondeea and Tuppa Sect eat together and intermarry in all parts of the Country and even did so at Ahmudabad till lately, and though his family held the Dhoondeea tenets that his daughters and Sisters were married into Tuppa families.

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The Court thought that sufficient evidence had been already taken on these points and declined calling them, asking Appellant at the same time how he could expect to eat with the Tuppa Sect when there were no Dhoondeeas in the Beesa Sreemalee Cast. He answered that he had always done so, and his family was connected by marriage with many Tuppa families.

Respondents called seven witnesses to shew that Appellant was not permitted to eat with the Tuppa Sect after it was discovered that he had become a Dhoondeea.

Jaeechund Goolabchund proved that Nihanchund used to pay his adorations at the Tuppa Temple of Wuja Ansoor at Sanud up to A. S. 1855, and that he was the only one of the Dhoondeea Sect who did so; that there were no Dhoondeeas among the Beesa Sreemalees and that no Tuppa was at liberty to change his persuasion.

Googul Kala, of Sanud, and Phoolchund Jetha corroborated this, the former adding that Appellant since his expulsion had betrothed two daughters and married a third to Dhoondeeas, and that the two Sects at Sanud do intermarry, it being a rule that the Dhoondeea Bride in such case must follow the rules of her husband's, the Tuppa, Sect ever after. Two more confirmed this and the Court declined calling the others.

Appellant thereupon exhibited four papers, Two of them letters of Nuhanchund advising him of his expulsion from Cast; a third a receipt for the money paid as a Fee for his readmission into Cast on the 5th Chytur Vud 1847; the fourth an agreement signed by all the Muhajuns of Sanud binding themselves under Security for a Penalty of Rupees 500 to the Muha Rana in case any quarrels or disturbances should arise in the Cast in future. This was dated 3d Phalgoon Sood 1857.

The Court after summing up the evidence observed, that the question to be determined was simple, viz. whether the Respondents should or should not be compelled to admit Appellant and

his

his family to their Cast dinners and other rights of Cast. Appellant was a native of Sanud in the Dholka purgunnah ; Respondents, the whole of the Beesa Sreemalee Cast in the City of Ahmudabad who were all of the Tuppa Sect, and about seven years ago expelled Appellant on account of his professing the Dhoondeea tenets. Appellant declared that for seven generations his family always had professed these tenets, which Respondents denied, and declared if it had been the case it had been without their knowledge, and if they had known it the daughters and relations of Appellant would not have been permitted to marry into their Cast. It was in the opinion of the Court sufficiently well established, that for three generations the family of Appellant had adopted the Dhoondeea tenets without relinquishing those of the Tuppas, and that they had continued at all times to frequent the Temples of both Sects, and this being the case it was difficult to reconcile to truth the asserted ignorance of the Respondents. In Ahmudabad there were no Dhoondeeas in the Cast, but in places where there were both Sects, in some the two ate together and intermarried, whilst in others, as in Cambay for instance, they did not unite in any way.

Upon consideration of this fact, and of there being none of the Dhoondeea Sect in Ahmudabad, the Court was strongly disinclined to compel the Respondents to readmit the Appellant into their Cast, and at the same time must consider it a great hardship upon the Appellant to be kept out of it, as the Court could not but believe unfounded the Cast's assertion of their ignorance of Appellant having adopted the Dhoondeea tenets; and therefore the marriages which had for many years past been contracted between the Appellant's family and others in their Cast must be admitted as at least a tacit consent on the part of the Respondents. As however the adoption of these tenets had certainly at no time been openly avowed by the ancestors of the Appellants, nor by himself until this time, the merits of the cause stood rather in favor of the Respondents,

and

and in order to determine with justice to both parties, it was decreed that the Beesa Sreemalee Bunyun Cast in the City of Ahmudabad should not be compelled to readmit the Appellant and his family to Cast dinners and other rights of the Cast, but that such persons of the Cast resident in Ahmudabad as might be disposed to extend their invitation to the Appellant should be at liberty to do so, and that it should be no excuse to the remainder of the Cast for not attending, and they should make no objection on this account, but should attend as they would have done if the Appellant were not invited. In like manner, with respect to marriages, those who already did, or might hereafter, intermarry with the family of the Appellant should not be molested for so doing, nor should the Cast in Ahmudabad on any occasion expel from their Cast or in any manner disturb such persons of the Cast who might go to the house of Appellant, for they were at liberty to drink water with him, or to have intercourse and associate with him and his family in every way they might think proper. On the other hand it should be quite at the option of every man to call the Appellant and his family to the dinner of the Cast or not, and Appellant and his family should have no ground for damages in consequence of being upon any occasion omitted, or of any person refusing to drink water or to associate with him or them. But it was further decreed that if Appellant should relinquish the tenets of the Dhoondeea Sect and retain and adhere to those of the Tuppa only, then in that case he and his family should be admitted to the full rights of the Cast in every respect, and should be entitled to sue for damages for any neglect towards him from the Cast, or from any individual of it. Each party to bear their own costs as equally to blame.

Decree 11th Dec. 1823.

Sadar Udalut, *Sitting Judge.* J. Sutherland, *Second Judge.*

The Appellant in preferring his Appeal against this decision, rested it mainly on the ground that there was no new act to be charged to him why he should not be fully restored to his Cast; he also took up generally the grounds already gone into in the lower Court.

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The Sitting Judge did not admit the arguments of Appellant to have sufficient weight to impugn with effect the decision come to by the Zilla Judge in support of the Cast excluding Appellant unless he abandoned his Sect and came over to them, which decision was in every respect exceedingly favourable to him. The case was that of one against many, and whatever might be the custom of the Tuppas elsewhere in their intercourse with Dhoondeeas, as no instance was given of inconsistency in the Ahmudabad Cast, as where another Dhoondeea had been preferred to the Appellant and admitted to the privileges of their Cast or the like, the Ahmudabad Cast must be supported in the act which they had the full power to carry through. The Sitting Judge however referred the case, as one of importance, to a full Court.

Which affirmed the decision of the Ahmudabad Zilla Judge with costs in Appeal against Appellant.

Competent Court.
J. Romer, *Chief Judge*.
E. Ironside, *Third Judge*.
Decree 14th August 1823.

N°. 118.

SHEKH UHMUD SHEKH RUHEEM.....Appellant,

VERSUS

Mr. HUFEEZ BUHOO, Widow of UHMUD HASHUM..... } *Respondent.*

THE Suit was filed by Respondent in the Zilla Court on the 11th January 1822, to recover possession from Appellant of one house and half another house in Broach which he had caused to be attached with notice of Sale in execution of a Decree for Rupees 297-3-60, which he held against her husband the former owner, who had however previously bestowed them in Gift on Respondent by a Hibbeh Namu in A. S. 1869. In virtue of this Hibbeh Namu she sued to have the attachment removed, laying her damages at Rupees 149-2-80.

Broach Udalut, R. Boyd, *Register*.

Claim by a Mooluumudan Widow, under a Hibbeh namu by her husband in her favor, to

Appellant

prevent the sale of her husband's house by Appellant in execution of a Decree against him.

Attachment annulled by the lower Court, but affirmed by the Sudur Udalut, finding the Hibbeh namu invalid.

Appellant declared that the Hibbeh Namu was a fictitious document, lately made for the purpose of screening the houses from his just claim, as a proof of which it would be found that Respondent had never acted upon it by taking possession; and further that Respondent's husband had in a former Suit given these houses as security for his own debt, thus plainly declaring them to be his own. And should Respondent plead it was given in satisfaction of Dower, he could prove that she had 300 Rupees worth of Dower Jewels now in her possession, though the usual value was only Rupees 127.

The Hibbeh Namu bore date 5th Margsirsh Sood A. S. 1869 or 9th Dec. 1812, Uhmud Hashum thereby giving the whole of one, and his half of another, house to Respondent "in lieu of Dower and service performed." It was signed by four witnesses, three of whom proved it in Court by recognizing it and deposing to its execution in their presence. Only one of them spoke to Respondent's possession. The witnesses called by Appellant said that the amount of Dower in their Jumaut, the Calico Weavers, varied from 127 to 750 Rupees, and one of them had seen Respondent with 200 Rupees worth of ornaments on her person. The other admitted that it was not always necessary to affix the Qazee's Seal to Deeds of Gift.

The Court conceived the Deed of Gift to be fully proved, but entertained a doubt whether a Hibbeh Namu were valid unless authenticated with the Qazee's Seal, but as Appellant's witness had admitted it, and the matter of the value of Dower was likewise settled, the Court decided the Hibbeh Namu to be valid, and decreed removal of the attachment under it, and payment of Respondent's Costs by Appellant.

Decree 1st July 1822.

Judge's Court in Appeal, J. Kentish, *Judge*. Decree 17th Jan. 1823.

The Judge was inclined to doubt the validity of the Hibbeh Namu as regarded execution prior to the date of the debt on which Appellant had obtained a Decree against Respondent's husband, because the Writer of the Deed had not appeared to explain the

date

date, and the reason of the day of the week not being entered as usual. Still as there was not sufficient to authorize rejection of the rest of the evidence to the Deed, the Register's Decree was affirmed.

The Sitting Judge thought the Deed itself suspicious, not only from the objections taken by the Zilla Judge, but from its appearance, which was that of an instrument lately written on old paper. But neither of the lower Courts had taken notice of the main point pleaded by Appellant and uncontradicted by Respondent, that the property given had not been transferred to the possession of the Donee, Respondent, but had remained until the attachment partly, (that is, the one whole house,) in the hands of the Donor, and partly, (viz. the half house) in that of his cousin, who owned the other half of it.

Sudur Udalut, *Sitting Judge*, J. Romer, *Chief Judge*.

Even admitting that the deed was executed by Uhmud Hashum it became necessary to ascertain whether the Law acknowledged its validity. The Law officer was therefore asked whether admitting the Gift to have been made to Respondent by her husband in lieu of Dower, it would hold good and capable of being executed if the Donor and his Wife, the Donee, were living in the one house, and his cousin in that other upon half of which the Donor had a claim? They answered, a Hibbu or Gift is fixed by the Ijab-i-qubool, or "Acceptance of the "Verbal gift" and is perfected by possession. And from the contents of this Hibbeh namu it appears that the Ijab, or "verbal offer" alone is written, not the acknowledgment or Qubool, and possession did not follow, wherefore the Hibbeh namu is not valid, and must not be executed. This from the Hidayu on the subject of Gift.

The Sitting Judge concurring in the propriety of this exposition, referred the suit to a Competent Court for reversal of the lower Courts' Decrees.

The Court having obtained the concurrence of the other Moohummudan

Competent Court,

J. Sutherland, *Second Judge.* R. Ironside, *Third Judge.* Dec.—26th July 1822.

Moohummudan Law Officer to the above exposition of their Law, decreed that the Hibbeh namu was null and void, and that the attachment should stand good

N°. 119.

RAMDAS BRIJBHOOKUNDAS,.....APPELLANT,

VERSUS

GEORGE CORSELLIS Esquire, Commercial Resident..... } RESPONDENT.

Surat Udalut, J. Vibart, *Register.*

THE Suit was filed in the Zilla Court by Appellant, who sued to recover from the Respondent Rupees 754-0-30 principal and interest for Customs unduly levied by the Collector of Sea Customs upon Appellant's goods contracted for by Respondent, who was bound by the contract itself to pay the duties upon the said goods. The quantity contracted for was 632 kodees (or score) and 10 pieces, and another contract was afterwards made for 23½ kodees more, and all had been delivered. The amount customs levied was Rupees 501-2-40; Rupees 150-1-90 was the Mokat, and the balance Rupees 90 was claimed as interest upon these payments.

Claim by Appellant, a manufacturer contracting with Respondent (the Commercial Resident) for recovery of Customs levied from Appellant, indefiance of the Contract which bound Respondent to pay them. Dismissed on proof of payment of Customs by the Respondent, and Appellant referred to his action against the Custom Master.

Respondent answered that the claim was unfounded, as he had duly executed the terms of his contract by paying the customs himself, and Appellant had received the price of his goods as agreed on.

The contract was dated 11th Bhadrapud Sood A. S. 1875, or 31st August 1819; thereby Appellant agreed to furnish Respondent with 641 kodees of Dhotees and Bhownuguree Sarees, the payment of Customs upon them to be defrayed by Government, and the goods, equal to the patterns, to be delivered by

Appellant

Appellant within five months from that date, he becoming amenable to the penalty laid down in the Government Regulations for breach of the terms.

Respondent produced Custom House Bills receipted, and Appellant's own Sameedustkhuts in proof of payment of the Customs by himself, which Appellant admitted to be correct, and said the customs might have been paid as stated, but it was by mistake.

The Court found that Appellant had no grounds for this action. The agreement distinctly specified that the customs due upon the whole of the cloths supplied by Appellant to Respondent should be defrayed by the latter, who by the receipted Bills from the Custom Master appeared to have fulfilled the condition. Appellant had produced a similar Receipt dated 24th June 1819 for 140 kodees 9 pieces of Baftas and Dhotees imported by him in that year from Broach, Unkleswur, and Dubhoee, alleging that they were afterwards furnished by him to Respondent. But this he did not establish. It was not necessary to go into the case, for allowing that customs had been levied on these goods from Appellant after payment of the same by Respondent, still Appellant's claim for recovery must be against the Custom Master not against Respondent, who was bound by his agreement to pay the Customs on all the cloths supplied by Appellant to him on account of the Hon'ble Company, and in doing so, had fulfilled his contract. Appellant's claim was therefore dismissed with Costs.

Decree 7th Dec. 1822.

The Court held that the mode of redress pointed out by the Register for Appellant to pursue was certainly the best; and there was no doubt that great neglect had occurred on the part of Appellant for which he had himself alone to blame in allowing Customs to be twice paid on the same articles. Even in the Receipt he had himself produced, the goods mentioned, on which he said he had paid customs and afterwards disposed of to Respondent, did not tally with those contracted for, which were

Sudur Udalut, *Sitting Judge*, J. Sutherland, *Second Judge*.

all

all to come from Bhownugur, those for which he had paid customs being of a different kind and from other places. The Register's Decree was therefore affirmed with Costs.

Decree 28th July 1823.

N°. 120.

ROOPCHUND TILUKCHUND, on his decease his Brother JUVEHUR TILUKCHUND. .... } *Appellant,*

VERSUS

PHOOLCHUND DHURMCHUND and BUHINKOONWUR Widow of RAEECHUND Son of Appellant ROOPCHUND. .... } Respondent.

Ahmudabad Udalut, W. A. Jones, *Judge.*

THE Suit was filed on the 20th September 1821 by Appellant to recover from his daughter-in-law, Respondent Buhinkoonwur, a house valued by him at Rupees 500, and from Respondent Phoolchund Dhurmchund Rupees 1100 damages for loss of character by his connexion with Respondent Buhinkoonwur and living in the same house with her. It appeared from the Plaint and evidence in the case, that Appellant went about 25 years before to seek his livelihood at Poonah, leaving his Wife and Son living in the house in dispute at Ahmudabad, which was left him by his father. His wife died in A. S. 1870 and his Son in 1873. Buhinkoonwur then took the other Respondent to live with her, and they cohabited till 1877 when Appellant heard of it, and returned to Ahmudabad and filed this Suit.

Suit by Appellant, against his daughter-in-law for a house, and against her paramour, for cohabiting with her.

Decision against the father-in-law in the Zilla Court and against his brother in the Sudur Udalut, on a point of Hindoo Law.

In answer it was pleaded, that Buhinkoonwur's husband was Phoolchund's cousin. That Phoolchund had released her from trouble with the Government, and supported her, and as he was a family man she had taken him to live with and protect her, and had lately mortgaged the house to him in remuneration for Rupees 657 sums advanced to her.

The

The Appellant called witnesses to prove that Respondent, his daughter-in-law, had means of support from her Pulla, but so far from succeeding in shewing this, it turned out that she had no visible means of support, and the same witnesses stated that in a case like the present the widow, being in distress for her support, might mortgage her father-in-law's house during his absence. Respondent likewise explained that the sum taken up on mortgage was expended in defraying debts of her mother-in-law, her funeral, and the charges of her husband's last sickness and funeral.

The Court therefore held that this part of the claim was not maintainable, and it was thrown out, and with respect to that against Phoolchund, it was unfounded in as much as Appellant had been absent 27 or 28 years, Respondent Buhinkoonwur had never seen him, and it was common in the Cast of the parties for persons to live together in the same house. He had proved nothing further than this, and his reputation could not have suffered. Appellant's claim on this head therefore was also dismissed, and he was ordered to pay costs.

Decree 27th Dec. 1822.

Sudur Udalut. *Sitting Judge*. J. Sutherland, *Second Judge*.

Appellant Roopchund died soon after filing the Appeal, and notice was issued for heirs to appear and continue the prosecution of it. His brother Juvehur appeared but was opposed by Respondent, who pleaded that the two brothers had separated, and that she alone was consequently Heiress to the late Appellant as widow of his son.

To settle this preliminary point, the Sitting Judge required the Hindoo Law officer to state, whether the brother was entitled to carry on the Appeal or not?

He answered, if the two Brothers had not divided the property of their father, the survivor, Juvehur, was heir to the other and was entitled to carry on the Suit. But if they did divide their father's property and separate, then Roopchund's Heir was Buhinkoonwur, the widow of his Son, and Juvehurchund could not proceed with this claim. The

The parties split on this point, Respondent asserting that division had taken place, Juvehur declaring it had not.

A precept was therefore issued to the Zilla Judge to take evidence of the separation, if to be had, giving his opinion on the proceedings he might hand up under this precept. From his return it appeared that the late Appellant Roopchund was the youngest of three Sons of Tilukchund, but only half brother of the other two Sons; that he lived separate from his Brothers for a term of from thirty to fifty years, and during the last twenty five it was known and admitted that he was absent in the Dukhun. It could not be clearly ascertained whether the property of their father Tilukchund had ever been divided, but the Zilla Judge believed that no Deed of partition was ever drawn out. In a suit formerly filed by Juvehurchund against Respondent Buhinkoonwur, he had admitted a sort of division, by declaring that the upper part of this house in dispute belonged solely to Roopchund, and the lower to himself, having been so made over by their Father, and in filing that suit he laid his claim clearly only for the lower part, whilst he admitted the right of both his brothers to the water and compound about the house. The Zilla Judge therefore gave his opinion that though no regular and written partition had been executed, yet that the brothers perfectly understood that certain parts were as the share of each.

The Sitting Judge on resuming the case laid the fresh evidence before the Law Officer for his opinion as to the fact of separation, he considered it to have taken place.

The Sitting Judge being of the same opinion, referred the case for reversal of the Zilla Judge's Decree, since the fact of division established that Respondent Buhinkoonwur was Heiress to the late Appellant Roopchund, in consequence of which further proceedings must abate.

Competent Court,

The Court concurring in the finding of the Second Judge, decreed

decreed that Respondent Buhinkoonwur was Heiress of the late Appellant Roopchund as related to the house sued for, and dismissed the Appeal, thereby affirming the Decree of the Zilla Court. Costs to be borne by Appellant Juvehurchund.

J. Romer, *Chief Judge.* E. Ironside, *Third Judge.* Dacree 5th Feb. 1824.

N° 121.

FRAMJEE MANIKJEE and FURIDOONJEE DOSA BHAEE, ... } *APPELLANTS,*

VERSUS

JAEERAM GOVIND. ..... *RESPONDENT.*

APPELLANTS filed their Suit against Respondent on the 24th October 1822 to recover from him the sum of Rupees 1,230-0-23 being Rupees 1127-2-0 principal of a Sameedustkhut passed to them by Respondent's late father Govind Premjee in A. S. 1878 and Rupees 103-2-23 interest since accruing.

Surat Udalut, G. W. Anderson. *Judge.*

Adjusted account in the nature of a Bond, not actionable unless written on stamped paper.

Respondent being a subject of the Gaeekowar, but then in Surat, Appellants made affidavit that their claim was just, and that Respondent was about to leave Surat, on which Process for his arrest was issued.

Respondent answered that the claim was totally false, and that the Sameedustkhut under which Appellants professed to sue was obtained from him by violence, he having been seized whilst sitting at a Shop in Surat, carried off to Appellants' house, and there kept without food or drink till he signed this Sameedustkhut, on account of which he declared he had never received any thing whatever. He referred the Court to the proceedings of the City Kotwal by whom the matter had been investigated, and he said that he and his father were perfectly separate, and Appellants ought to have sued his Father for a debt which they acknowledged to be originally due by him.

The

The Court called up the Kotwal and recorded the complaint received by him from Respondent, with Appellants' answer to it, but no conclusion was to be drawn from it. The Sameedustkhut was as follows.

"Account of Jaeeram Govind Patel, inhabitant of the Village of Oomra, A. S. 1878.

> "1st Kartik Sood, Friday, Patel Govindjee, my Father, owes you for a Sameedustkhut executed jointly and severally last year, on account of which I now acknowledge myself answerable for this sum, Rupees eleven Hundred and twenty eight, two quarters, two and a half Dokras. Witness my hand."

The Court declared that this Paper or Sameedustkhut could not be recovered upon, because it contained conditions making it defacto a Bond, and it ought therefore to have been written on stamped paper. For it set forth that the Father, under a former account owed so much, that they were jointly and severally responsible, and that the writer became responsible for that amount on the part of his father. This kind of writing might be introduced into an account Book, but it must be considered an evasion of the stamp regulation. Where a person bound himself to pay a sum of money on the part of another, the Document by which that was accomplished, whatever it might be styled, was a bond, and as such ought to be on regularly stamped paper. As Appellants had no claim against Respondent except under the writing on which they sued, and that Document was invalid, the claim was dismissed, they bearing all Costs of suit.

Decree 12th March 1824.

Sudur Udalut, *Sitting Judge.* J. Sutherland, *Second Judge.*

The Appellants pleaded that a Sameedustkhut was not required by the Regulations to be on stamped paper; that the Paper on which they sued was a Sameedustkhut, and consequently they ought to have had a Decree in their favor.

The Sitting Judge held, that the decision of the Zilla Judge ought

ought to be affirmed on the ground set forth in it. If Respondent during his father's life time bound himself in his stead, the debt was transferred from Father to son, which act required a very different instrument from a common Sameedustkhut, even if Respondent were a joint sharer with his Father.

Appellants now pleaded against this reasoning that the Chief Judge, when Judge of Surat, procured from Government certain exemptions from the operation of the Stamp Regulation which were acted on, and that transactions of the nature of this in dispute were among these exemptions. The Sitting Judge held it fair under these circumstances to refer the case to a full Court.

Which affirmed the Decree of the Zilla Judge with Costs.

Competent Court,
J. Romer,
Chief Judge.
E Ironside,
Third Judge.
Decree 11th Nov. 1823.

N°. 122.

MOTEELAL HEERALAL.....*APPELLANT*,

VERSUS

JUMNADAS, UMROOTLAL and GOVURDHUN, Sons of DUYARAM SOOKHLAL..... } *RESPONDENTS.*

THE suit was filed on the 29th April 1822 by Appellant, to recover from Respondents the sum of Rupees 100-1-42, amount due to him on an account current by their late Father Duyaram Sookhlal on the following Items, Rupees 60-0 81 on the 2d Asvin Sood 1876 or 9th October 1820, Rupees 18-3-0 on the 2d Kartik Sood 1877 or 7th November following, and the interest on them at 6 per cent, Rupees 7-1-34. The balance sued for was made up with Exchange in Ankra.

Ahmudabad Udalut,
D. Blane,
Assist. Register.

Waida Vyapar, Gambling speculations, declared illegal.

Respondents pleaded in answer that they had no account whatever with, Appellant, and owed him nothing, besides that Appellant was incapable of carrying on an action because under age.

The

The account exhibited by Appellant was a common entry of advances made to Duyaram on the dates specified.

Respondents, in order to prove that the action was not maintainable by Appellant; exhibited Copy of a Decree in Appeal passed by the Register's Court in a suit filed by the daughter of Respondent Govurdhun Duyaram against Juvehur Behchur for Rupees 76-3-75 on Account Current, decided by the Assistant Register's Court in her favor; but the Register in his Decree reversed the Assistant Register's decision on the grounds of the debt not being proved, and because the daughter as a minor was incapable of suing for recovery of property.

The Court found it admitted by Appellant's Vukeel that his client was under age, and the above decision was a Precedent for dismissing the Suit of a minor in such Case; but waiving that point, the account, when examined and carried up to the other Books, proved to be of the description termed "Waida Vyapar," (1) a gambling speculation, and as such transactions were not countenanced by the Court, the Suit was dismissed with Costs.

Judge's Court in Appeal, W. A. Jones, *Judge*.

The Appellant went at once to impugn the grounds on which his Suit had been dismissed, urging that the Waida Vyapar was carried on to a great extent in Ahmedabad, and being thus sanctioned by Custom and involving the right and property of a number of persons, could not be destroyed, as it would be by the principle now sought to be established.

The Judge recorded a Decree passed by the late Judge, Mr. Ironside, on an Appeal from the Register, who had given a decision in favor of a person suing on a Waida Vyapar account,

> Mr. Ironside found "that many people in Ahmedabad "carried on the Waida Vyapar and in it many had failed. "It was just like gambling, neither bonâ fide paying, nor "receiving

(1) See note to page 415.

" receiving, but depending entirely on word of mouth,
" on which thousands of Rupees were often won, and lost.
" It was proper to discover whether such transactions
" were not contrary to the Shastr, and a question was pro-
" posed to the Shastree, who declared that the Udalut
" was not at liberty to decree the amount of such transac-
" tions, as they were improper, and contrary to the Shastr."
The Register's Decree was therefore reversed and a " De-
" cision given, that no Decree would be passed in future
" for the amount of any Waida Vyapar dealings."

Decree 31st Dec. 1822.

The Court considered this decision to have been most proper, and affirmed the Assistant Register's Decree by dismissing the Appeal with Costs.

Appellant further appealed to the Sudur Udalut, but that Court entirely agreed with the lower Courts in the view they had taken of this kind of transaction, and dismissed the Appeal.

Sudur Udalut, *Sitting Judge*, J. Romer. *Chief Judge.* Decree 11th Nov. 1822.

N°. 123.

PANACHUND OOTTUMCHUND.....APPELLANT,

VERSUS

GHOOLAM KHAN, Son of SULEEM SHAHKHAN..... } *RESPONDENT.*

THE Appellant filed a suit on the 23d February 1822, as Guardian of his Son Wareechund, a minor and nominal Head of the Firm of Wareechund Munguldas, to recover from Respondent Rupees 2601, balance of an account current with that house adjusted by Respondent, and attested by four witnesses. It was entered in the Ledger (Soodha Waee) of that house for the year 1878, and appeared to be an Extract made from former years' accounts entered afresh in this year. Under " Balance Rupees 2601," on the debit side were entered these words " Balance due this 2d Margsirsh Sood 1878, after " drawing

Ahmudabad Udalut, W. A. Jones. *Judge.*

Account Current, entered in a merchant's Books, and signed by the debtor, held to be a valid and actionable debt, not liable to the penalties of the stamp regulation.

" drawing out the account in cash entries; the country account " Balance, being Rupees 4991-3-68 from the 2d Margsirsh " Sood 1874, is separate."

Then came the following, "2d Margsirsh Sood 1878. To " Parik Wareechund Munguldas writes Ghoolam Khan Su- " leem Khan as follows, We have drawn out our account for " the House contract from 2d Margsirsh Sood 1874 up to this " date; balance Rupees 2601, Cash, remains against me. " Interest goes on at the usual account current rate. The " balance on account of the Villages remains as above. Writ- " ten by Keshoor Munohurdas.

(Three Witnesses) (Signed) GHOOLAM KHAN
SULEEM KHAN, in possession of my full senses and faculties.

As Respondent totally denied the claim, an examination of the account was made, and witnesses called to prove settlement of the above account by Respondent.

The Court considered the Appellant's case proved, but held the manner in which the balance was struck to be equivalent to Respondents' passing a Bond for the amount found due by him, for not only was the principal Sum specified, but it was declared that interest should be allowed upon it at the rate usual between Merchants in their dealings. It was Signed by the writer Keshoor Munohurdas and also by the Respondent and witnessed by three other persons. The Court could not perceive the smallest difference between this and any note of hand, and accordingly, as the action was laid on the amount of balance due, and not on a general account current, it was compelled to dismiss the suit because this document had not been drawn out upon a stamped paper. Costs to be borne by Appellant.

Decree 21st Jan. 1823.

Appellant objected to the decision on the ground that his case

Sudur Udalut, *Sitting Judge.*
J. Sutherland, *Second Judge.*

case was founded on a bare adjustment of accounts which could not be considered as a writing required to be on stamped Paper.

The Sitting Judge was clearly of opinion that Appellant's objection to the decree should be sustained; the writing was a formal adjustment of running accounts, and as such was allowed to be on unstampt paper, the Stamp Regulation not being considered to apply. A reversal of this point would lead to an investigation of the merits of this case, and Appellant having proved his claim in the lower Court, the Sitting Judge was in favor of a decree being given for him, with which view the case was submitted for the consideration of a competent Court.

Competent Court,
J. Romer, *Chief Judge.*
E. Ironside, *Third Judge.*
Decree

The Court held that the tenor of the acknowledgment, though it partook something of the form of a Note of hand, did not authorize its rejection merely because not written on stamped paper, for it was executed by the party contracting the debt so acknowledged, not by a third person making himself responsible for such debt. (Vide Report No. 121.) And it was in evidence that Respondent acknowledged the debt when he struck the balance, being that debt, in the Books. On these grounds the Zilla Judge's Decree was reversed in favor of Appellant.

N°. 124.

GOPAL RAO PANDOORUNG.....APPELLANT,

VERSUS

RUMA BAEE, widow of GOVIND RAO PANDOORUNG, represented by her Father APAJEE SIOORAM WAGHOLKUR. } *RESPONDENT.*

North Konkan,
E. H. Ballie, *Judge.*

RESPONDENT was Plaintiff in the Zilla Court, suing Appellant, the half brother of her deceased husband Govind Rao

Claim by a Widow against her husband's half brother for a half share of the family Estate, being the Udhikar of the Wujhe Turuf.

Admitted by the lower Courts on the ground of separation between the Brothers.

Decree reversed by the Sudur Udalut, holding separation not proved.

Rao Pandoorung, in a Suit filed on the 13th June 1821, to recover from him the estate belonging to the deceased. She stated in her Plaint that the two Brothers were Udheekarees of the Turuf of Wujhe Prant Panwell and remained united in interests until 1739, when they separated and each got and kept half the family Estate. Govind Rao died in Asvin A. S. 1742 or Oct. 1820 and Respondent took possession of his Estate, out of which she was ejected in the present year by Appellant having taken from the ancient cultivators of their lands situated in the villages of Punwelee, Unkoolee, Hureegram, and Sioonkur, the whole of the produce due from them without accounting to her for her husband's half share. The amount of Suit was Rupees 267-2-0, value of this half share.

Appellant answered that in the month of Magh 1741, Govind Rao, who was his half Brother, and had been once married before took Respondent, who was then only seven years old, to Wife and died the next year. Appellant performed his funeral ceremonies, and Respondent at her father's instigation went and lived apart. No separation had taken place between himself and brother, and Respondent had no right whatever to claim her husband's share of the estate, but was only entitled by the custom of the country to a maintenance.

Respondent handed up various receipts given in the name of Bapoojee Siooram to cultivators for sums paid by them in the year Ihide Ashreen A. D. 1820 | 21. Also a memorandum of Division drawn up between the two Brothers for the Rent of their lands for the year Ihide Ashur; at the foot of this the Balance still due, Rupees 292, was equally divided between Appellant and Respondent, whose husband was then dead.

She also exhibited a Power of arbitration passed by both brothers on the 10th Kartik Vud 1739 or 3d December 1817, agreeing to abide by the decision of five persons in the division which was to take place of their family Estate.

A

A Decree in a former Suit by Appellant against another person for ornaments received from the deceased Govind Rao, referred to a Punchayut, which " thought separation had taken " place between the brothers, and disallowed the claim," which was thereupon dismissed by the Court.

Respondent's next exhibit was a " memorandum of joint " lands &c. belonging to Govind Pandoorung and Gopal Pan- " doorung, Udheekarees of Turuf Wujhe this 2d Asvin Sood " 1742." There followed an enumeration of their lands in each village, which were to be equally divided between them with their Huks. Other Items of their personal property were specified as having been divided, and a reservation was made in favor of Respondent, who was solely invested with power to settle Govind Pandoorung's affairs of debts and credits, in which Appellant was declared to have no right of interference. It concluded thus, " The above is written with my own hand, " Govind Pandoorung. Let a fit boy be adopted by my wife " with concurrence of some respectable people in order to con- " tinue my family."

It was witnessed by four persons, inhabitants of Panwell.

The Kumavisdar of the district was called to shew that Respondent had received portions of the produce from the Ruyuts holding lands of the family, and had paid jointly with Appellant the Government Revenue due on their lands

Two of the witnesses to the memorandum of Division deposed to execution of it by Govind Pandoorung. They declared that the two brothers separated four years ago, a few months after their father's death, and performed their father's Sraddh separately—that it was not usual among Wuttundars to pass Farighkhuts; Appellant performed Govind Rao's funeral ceremonies. The lands were not divided, but Appellant and Respondent shared the crops equally between them.

The Patels of two of the Villages, and a Cultivator from a third,

third, were called, and from their evidence it appeared that so long as Govind Rao lived they paid their dues to him, and after his death to Appellant; they knew nothing of a separation between them.

Khunde Rao Ramchundur Udheekaree was called to shew the custom of the Country. He deposed that a widow whose husband had separated from his family under mutual acquittances would take his Estate. If not separate she would receive a maintenance, and as much as would carry her to Bunares. (1) It was usual when Brothers separated to execute such acquittances. This was the custom of Zumeendars without reference to the Laws of the Shastr. Could not say how it would apply to a childless Widow, unless her husband had given her a share, for in that case she would retain it.

The suit being closed the Court laid a statement of it before the Shastrees and required them to say whether, in case the two Brothers had actually separated, the Widow, Respondent, was entitled to her husband's share or not?

They quoted from the Dayu Vibhagu of the Mitakshura the law of Yagnyuwulkyu, "The wife and the daughters also," &c. (as shewn in Bombay Cases No. 37,) and said from this it was clear that in divided property the wife had the right of possession both in moveable and immoveable property; nevertheless, she had no right of gift, mortgage, or sale of the real property.

The Court finding the fact of separation between the brothers proved, and Respondent in that case intitled to possession of her late husband's Estate, both real and personal, and to the profits of it, decreed to her her late husband's Estate both real and personal, and the profits of it or its value as sued for, with all costs from Appellant.

Decree 14th July 1821.

Judge's Court in Appeal, E. H. Baillie, *Judge.* Decree 16th Nov. 1821.

The Zilla Judge affirmed this decision on Appeal.

The

(1) As the place of pilgrimage most frequented by Hindoos from this side of India.

The Sitting Judge observed that the lower Courts had considered the memorandum as sufficiently valid to authorize the assumption that a separation and partition had taken place between the brothers, and this had led to the exposition of the Shastrees being so expressed as to warrant a Decree being passed in favor of Respondent. But he was of opinion that this Document was in nowise binding upon Appellant, who had neither agreed to it, nor signed it, and that it established nothing in Respondent's favor. The conclusion was that the two Decrees of the Zilla Court should be reversed.

Sudur Udalut, *Sitting Judge*, E. Ironside, *Third Judge*.

The Court holding with the third Judge that Respondent had not proved a legal division of property to have been effected between her late husband Govind Rao and Appellant, reversed the Decrees of the Zilla Court which had awarded her the proceeds of Govind Rao's Estates, and a nonsuit was passed against her.

Competent Court, J. Romer, *Chief Judge*, J. Sutherland, *Second Judge*. Decree 8th Jan. 1824.

N°. 125.

MUNOHURDAS BOOLAKHEEDAS ..... *APPELLANT*,

VERSUS

LUKMEEDAS TOOLJARAM, and BHOOLEE, Widow of TOOLJARAM. } *RESPONDENT.*

THE Suit was filed in the Zilla Court on the 7th September 1819 by Appellant, who sought to recover from Respondent the amount value of Dower jewels presented by him to Respondent's Sister Lukmee on her marriage with Appellant's Son Dhoollubh. The marriage contract was stated to have taken place in A. S. 1848, and the amount of Dower was fixed according to the rules of their Cast, at Rupees 801; out of this he paid Rupees 501 in cash to the Bride's father Tooljaram in the name of the Bride and Bridegroom, and gave credit

Surat Udalut, G. W. Anderson, *Judge*. Dusa Morth Ghogwa Bunyuns.

Credit given by a Bride's father in his accounts to the Bridegroom's family for his daughter's Dower, held not to amount to delivery of Dower.

Dower actually paid by the Father-in-

law may be demanded on his daughter's death.

credit in account to Tooljaram's Firm for the balance Rupees 300. The marriage was celebrated in the month of Jesht A. S. 1850, and on the Diwalee of each succeeding year Appellant settled the account, making it with interest on the 1st Kartik Sood 1851 amount to Rupees 572-3-25. Besides this the usual presents were made to the value of Rupees 310-2-0, total Rupees 883-1-25, and with further interest to the 13th Margsirsh Sood 1873, when the girl died, it amounted to Rupees 1845-1-38. The Custom of the Cast was that the Dower of a bride should in the event of her death be restored to the Father-in-law within fourteen days. As such Appellant had applied for it, but without success, to Tooljaram who being now dead Appellant sued his Son, and Widow for Rupees 1591-1-37 balance still due after deducting Rupees 254 which they had pointed out to him in deposit with another person.

Respondents, admitting the statement of the marriage, and not objecting to the right of a Bride's Father-in-law to receive back the Pulla on her death, totally denied every thing stated in the Petition respecting receipt by them of the Dower and of the usual presents, declaring that Appellant himself being then a Merchant of some note had been allowed by Tooljaram to keep the Cash for the Pulla, (which they admitted was fixed in their Cast at Rupees 801,) at their credit in his Books. He had afterwards evaded a demand for an advance to make up ornaments, and before any thing more was done he failed in A. S. 1854. It was thus clear that Appellant himself had remained in possession of the sum agreed on for Dower, and that it never came into their hands. The same applied to the customary Presents.

Moteeram Nursingdas deposed to a dispute between Appellant and Respondent's father respecting these Dower jewels, each declaring that the other had them, in which dispute an agreement to arbitrate was drawn up but nothing further done. He added that Rupees 800 were always given in their Cast as Pul-

la,

la. Customary presents also were interchanged, after the contract, between the families of the bride and bridegroom, according to their means, on the Dussura and Diwalee. After death of a betrothed bride, her Father-in-law received back the Pulla from her Father and granted him an acquittance, and it was likewise incumbent on her Father to restore any jewels she might have taken to his house belonging to her Father-in-law.

Bhookundas Narayundas said the fixing of Dower was essential to a Mungnee, and the amount was always Rupees 801. He agreed with the other witness that the Dower must be returned by the Bride's father in case of her death.

Krishundas Brijbhookundas deposed that he belonged to the Cast of the parties. No Mungnee was ever concluded before fixing the Bride's Dower, which could not be demanded back so long as she lived, but would be, on her death, restored to her husband.

Another witness deposed to having seen the deceased Lukmee with at least 1000 Rupees' worth of ornaments on her person, but could not say where she got them. Mungnees, he said, were sometimes made after delivery of the Dower jewels, and sometimes left to the personal security of the Bridegroom. In case of the Bride's death the Pulla was always returned. It was sometimes placed for security in the hands of a merchant.

The Court held that Appellant had advanced nothing in support of his claim, since he had failed to prove that Respondents ever had possession of the Dower sued for, and as there was nothing on which a Decree in his favor could be founded, his claim was dismissed with Costs.

Decree 5th Feb. 1823.

The Appellant offered to produce further evidence in proof of delivery of the Pulla to Respondent, alleging that such had been tendered in the Zilla Court but refused. The Court observed that nothing of this was mentioned on the Zilla Judge's record,

Sudur Udalut, *Sitting Judge*, E. Ironside, *Third Judge*. Decree 26th March 1823.

and

and asked for the Durkhast offered for witnesses to the Zilla Court. Blank stamped paper was shewn as that on which the proposed witnesse's names were to have been written. The Court held that there was no necessity for now taking further evidence, when Appellant had omitted to call for it in the Zilla Court, and his appeal was dismissed on view of the proceedings now before the Court.

No. 126.

SOOKHLAL RUTTUNCHUND.....*Appellant,*

VERSUS

Mr. RUHEEMA BUHOO, Wife of MOOSA YAKOOB, Jew.....} *Respondent.*

Surat Udalut, G. W. Anderson, *Judge.*

Decree in favor of a Jew woman for Dower against her Bankrupt husband, to be executed in preference to all judgments upon debts contemporary with the assignment of Dower.

Examination of the provisions of a Zilla Decree not regularly appealed against, not permitted by the Sudur Udalut.

RESPONDENT on the 12th March 1822, filed a Suit against her husband Moosa Yakoob for Rupees 2,600, balance value of her Dower still remaining unpaid; it appeared that they were married about 8 years ago at Bughdad, where Moosa Yakoob executed a Mihr Namu for 6,000 kooroosh, and gave her an additional sum of 2,500 kooroosh after arrival at Surat, by an entry at the foot of the Mihr Namu. Her husband had expended a large fortune in hunting for the Philosopher's stone, and as the little money he still had was going in the same way Respondent found it time to sue now to obtain payment of the amount of her dower that she might take care of it herself; and she likewise prayed that measures might be taken for ensuring her a maintenance in future from her husband. The Suit was decided exparte on the 12th September 1822, in favor of Respondent for Rupees 2,181, calculating 1 Rupee to be worth $2\frac{1}{2}$ kooroosh.

Appellant Sookhlal Ruttunchund obtained a Decree under date 12th October 1822, against Moosa Yakoob in the Register's

ter's Court under a mortgage Bond for Rupees 1,000 of A. H. 1233, and another under a Rent Bond of the same house on the 7th October 1822.

Order of attachment issued in favor of Appellant against this House on the 23d November.

In this the present action arose, Respondent suing Appellant under date 13th December, to cause removal of the attachment from the house.

The Court, after recording the Decrees in the other Suits under which the parties respectively claimed, declared its opinion that Respondent was entitled to priority of execution in virtue of her Decree in preference to the claim of this, or any other creditor, whose demands might have arisen subsequent to the grant of a Dower.

The attachment was therefore ordered to be raised, it being provided that after due payment of the amount of Respondent's Dower, the balance that might remain of Moosa Yakoob's property should go in liquidation of Appellant's claims, as they might be found to be, he bearing Costs of the present Suit.

Decree 28d Jan. 1823.

A Decree in every respect similar was passed on the same day on a suit filed also by Respondent against Suhoorabjee Buhramjee who had obtained three judgments of the 23d June 1821, the 12th April, and 11th June 1822, against Moosa Yakoob, and had sued out execution by attachment of Moosa Yakoob's property.

The Defendants in both these suits filed separate Appeals to the Sudur Udalut.

Sudur Udalut, *Sitting Judge.* J. Romer, *Chief Judge.*

The Sitting Judge was of opinion that under the Mihr Namu the Respondent had a clear right to stand the first of all her husband's creditors. But a point was brought forward in the Sudur Udalut in regard to the legal effect of part of this Instrument which was not considered, or in fact mooted, in the Zilla Court.

It

It was contended in the Appeal that the sum added to the original Dower being a transaction completed in Surat, the instrument or writing by which this additional obligation was contracted should have been drawn out and executed upon stamped paper agreeably to the provisions of Section XIIIth Regulation XIV 1815.

The Sitting Judge was of opinion that the objection was well founded, for although the Mihr Namu did advert to the probability of the Dower being increased, and this increase had in fact been made, yet the mention of such intention in an instrument executed at Bughdad could not supersede or take away the obligation, which required the instrument or writing effecting this increase to be drawn upon a certain kind of paper if completed at Surat. The Decree of the Udalut in favor of the Respondent recognizing the whole amount of the Mihrnamu could not in justice be allowed to operate to the detriment of the Appellants. The suit upon which it was founded, was an exparte one against the husband, in which the point above considered did not come into question.

Upon these grounds the Sitting Judge referred the case, with his opinion that the judgment of the Zilla Judge of Surat in these Appeals should be amended to the extent of striking out the sum of 2,500 Qooroosh or their Value, in current coin Rupees 1,000, from the amount of the Dower recoverable by the Respondent from her husband's effects.

Competent Court, J. Sutherland, *Second Judge.* E. Ironside, *Third Judge.* Decree 24th July 1823.

The Court held that it could not now extend its investigation into Respondent's claim beyond the Decree passed in her favor by the Zilla Judge on the 12th September 1822, which formally settled her demands on her husband's Estate. The justice of it could not be questioned unless under a regular appeal, which was not before the Sudur Udalut. Under this view the Court felt itself precluded from going into the objections brought forward by the Chief Judge, and therefore affirmed the Judgment passed by the Zilla Judge of Surat in

these

these two appealed cases under date 23d January 1823, each Appellant bearing the full costs on his own appeal.

N°. 127.

VEEJ BAEE, in succession to her husband KHOOSHALCHUND JAEECHUND deceased..... } *APPELLANT,*

VERSUS

PANACHUND JUVEHUR.....*RESPONDENT.*

Surat Udalut, G W. Anderson, *Judge.*

APPELLANT'S husband originally brought this Action on the 23d February 1820, against Respondent for recovery of Rupees 15,000 property left by his late Sister Jeevee Baee.

Suit by Appellant, a disinherited Hindoo, against his deceased Sister's Goomashta for recovery of her Estate, devised to him at her death by agreement. Claim for the Estate decreed good, but Respondent held not liable for want of proof of his being in possession.

It appeared from his statement that his father left him, Khooshalchund, and two daughters named Jeevee and Rajee. The property on his death came to their mother, who was succeeded by the daughters in possession of the Estate at her death in the month of Posh A. S. 1868. These two women employed each a Goomashta to manage for them, Respondent being Jeevee's Gomashta and a man named Hurka Dhuna that of Rajee. Appellant on the death of his Mother claimed the property from his sisters, who with the assistance of these their Goomashtas entered into an agreement with him, and a Deed was drawn up on the 13th Posh Vud 1868 or 12th January 1812, by which it was provided, That as long as the sisters lived they should retain the Estate, allowing him a maintenance of Rupees 301 per Annum, and that on their death their Goomashtas should deliver up to him the whole Estate as their Heir. He received this allowance from A. S. 1868 till 1873 when Jeevee died, and her half of the property fell into the hands of Respondent, her Goomashta. Rajee claimed from him Rupees 4,000 and recovered it by a Suit which Respondent did not appeal. Appellant now claimed for himself the whole of Jeevee's property under the agreement,

agreement, reserving his claim for the other half until death of his other sister Rajee.

Respondant totally denied, either that he was a Goomashta of Jeevee, or had possession of any property belonging to her or to the Appellant. The Will set up by Appellant, he said, was a forgery, as the real one was executed by the two Sisters, constituting the survivor of the two, Heir to the other.

The agreement which Appellant exhibited was passed to him by the two sisters Jeevee and Rajee, who, after granting him therein an allowance of Rupees 301 per annum to be paid on the 2d Jesht Sood of every year, declared him Heir in succession to her who should first die, the survivor still continuing to pay him Rupees 150-2-0 as her own share of the allowance, and he eventually succeeding to her Estate on her death also. They further bound themselves to furnish funds for any extraordinary demands of marriage &c. Reservation was made against his interfering with a paper of articles drawn up in A. S. 1866 between them and their Goomashtas (not named) but after their death he was empowered to receive their papers, accounts and effects, from these Goomashtas and to grant acquittances for the same. The Deed was signed by the two sisters and by their Goomashtas above named also, each below his own mistress's name, Respondent for Jeevee and Hurka for Rajee.

The surviving sister Rajee was called by Appellant, and deposed generally to the truth of what he had stated in his Plaint, proving the agreement, or Will, in Court, and adding that each Sister's Goomashta lived in his mistress's house, but the Capital in trade of each was kept in the name of their own Goomashta alone; their father gave the two Sisters each Rupees 5,000 as Sookhree or a Legacy, and their mother divided Rupees 20,000, more in equal shares to each. This formed their capital, and each gave her own Share to her Goomashta, Respondent receiving that of Jeevee. This was about eleven

years

years ago. Witness's own capital at the present moment was Rupees 28,000 and then in the hands of her Goomashta. The reason why their Parents gave all the Estate to the daughters was, that Appellant had squandered away a large sum of money and they wished to save their daughters from want, to which they would be reduced if Appellant got the Estate in the first instance.

Bhugwandas Kishundas, one of the Witnesses to the agreement as well as writer of it, and whose brother was Goomashta to Appellants' father, proved its execution by the Sisters and their Goomashtas, Respondent and Hurka. His evidence was corroborated by the remaining three Witnesses to the agreement, and they agreed that Respondent did live with Jeevee and still was in her house, having had possession of her Estate but carrying on the business in his own name and keeping all accounts in it, even for sums paid on account of Jeevee. They said Appellant Khooshal was about 25 years old when his father died, about four years before the death of his mother in A. S. 1861. They could none of them depose to actual delivery by Jeevee of her fortune, or any part of it, nor any Dufturs, to Respondent, and spoke only from general report that the capital of the business belonged to Jeevee.

Other Witnesses deposed to the same effect, and the Court read over,

> The Suit alluded to by Appellent in this Plaint. It was filed by his Sister Rajee against Jeevee's Goomashta, Respondent, and Hurukchund Wumulchund his partner in business, to recover from them Rupees 4,000, amount of Jeevee's share of Rupees 10,000 Sookhree left them by their father, Jeevee's share of which had been entrusted by her to the Defendants (Respondent and his partner,) who being allowed deduction for 1,000 Rupees, (or Rupees 500 to each promised them by Jeevee,) were sued for the balance. The claim was founded on a

counter

counter part agreement executed between the two Sisters (that alluded to above by Respondent in his defence) who, considering their father's Estate as belonging to Appellant, but the Rupees 5,000 Sookhree as their own property, agreed that the survivor of the two should take the other's share of it.

Respondent, without either denying or acknowledging himself Jeevee's Goomashta, defended himself generally on a Farighkhut passed to him by his Partner, who had thereby rendered himself liable. The partner rested his defence on the wording of the Sisters' agreement, which rendered it difficult to say whether the Sookhree was Rupees 5,000 between the two, or Rupees 5,000 to each. But the Court from other evidence found that it was Rupees 5,000 to each, and holding Respondent liable in person, and his partner also, on the ground that both became so by having passed the Receipt for the money to Jeevee, gave a Decree against both for the sum of Rupees 4,000 sued for and Costs.

The Court was of opinion that the Deed executed by the two sisters in favor of Appellant was proved, but there was nothing in the evidence adduced to fix the claim upon Respondent. It was not established, either that he took, or now had, possession of the property of the deceased Jeevee. Great suspicion lay against him, and there was much reason to believe that he was acting fraudulently, but there was no certainty of it, no such clear proof as would warrant a Decree being passed against him for the property sued for as belonging to Jeevee. The Decree was that, Appellant, and since his decease his widow, was entitled under the will to Jeevee's property, and that wherever it should be found it should be the right, and be put into possession of Appellant Khooshalchund, or his heirs, all Costs of suit being defrayed from his estate.

Decree 16th April 1823.

Sudur Udalut, Sitting Judge.

The Sitting Judge after referring to the original Suit recorded

on

on the proceedings of the Zilla Court as read over, declared that he felt the same doubts, and on the evidence adduced did not think Respondent could be saddled with the claim, though there appeared every reason to suppose it just to do so. In this doubt the Appeal was referred to a full Court which affirmed the Decree against Appellant.

J. Sutherland, *Second Judge.* Competent Court, J. Romer, *Chief Judge.* E. Ironside, *Third Judge.* Decree 5th Feb. 1824.

N°. 128.

Mr. NOOR ALUM, Wife of AGA MOOHUMMUD HOUSSAIN..... *Appellant,*

VERSUS

SHEKH BUHADOOR SHEKH MUHMOOD..... *Respondent.*

THE cause was laid in the Zilla Court of Surat by Appellant on the 6th December 1822, claiming a right to compel redemption by Respondent of a house mortgaged by him to her husband for Rupees 700 in A. H. 1229. Her husband she said had been transported for life, and she was left in possession of the house, which had fallen down and was of no use to her.

Sudur Udalut, J. Vibart, *Register.*

Action by the wife of a banished Moohummudan to compel redemption by Respondent of a house mortgaged by him to her husband.

Defence that it had been already redeemed.

Zilla Court nonsuited Appellant.

Sudur Udalut held the Claim good against Respondent whose witnesses were committed for perjury and himself for subornation of it.

Respondent pleaded that the mortgage had been redeemed long ago from Appellant's husband himself. The Bond was exhibited in Court and bore date 17th Zilkad A. H. 1229 or 31st October 1814. It was for half a house and bore the condition that the mortgagee might at any time demand his money at five months' notice, the same terms applying to the mortgager when he required his house.

Respondent remarked that many pieces of paper had been pasted on the back, and declared that the receipt endorsed on it shewing the money paid in redemption, was purposely covered with these pieces of paper. Appellant pleaded that it was done

to

to preserve the Deed which was much worn, and the Court directed their removal.

The mortgage being admitted by Respondent, as well as proved by Appellant, with the aditional matter that Appellant was still in possession and that Respondent had virtually admitted this by promising to allow Appellant herself to remortgage it, it remainded with Respondent to prove the redemption; this he did by two witnesses named Ubdool Ruheem Juohur Toopal, and Ubdool Humeed Hajee Duhneem, who distinctly swore that Hajee Duhneem, father of the last named witness and since dead, paid the amount of the mortgage to Mochummud Hoossain himself, in A. H. 1233, and that a receipt was written in Arabic on the back of the Bond by one Shekh Ubdoolla Busuraee, another person present.

An entry in Hajee Duhneem's account Book was shown in corroboration of this statement. With respect to possession, Respondent stated that the house was left with Appellant's husband, who agreed to rent it, but that no rent bond was drawn out because the latter was *on the same day* put in jail for the murder on account of which he was transported.

The Court was of opinion that Appellant's claim was unfounded, in as much as the payment of Rupees 700 to her husband by Hajee Duhneem in redemption of the Mortgage was proved. The Suit was therefore dismissed.

Decree 17th Feb. 1823.

Sudur Udalut, J. Romer, *Chief Judge.*

The Sitting Judge held that the evidence of redemption of the mortgage was completely met and contradicted by the fact that the mortgage Bond, said by them to have been endorsed with the receipt, and in possession of Appellant, who now produced it in Court, was still perfectly blank and without any writing, or the appearance of any writing upon it. This was conclusive as to the falsehood of the evidence, and Appellant's case was greatly strengthened by the proof on her part, and admission by Respondent, that the half of the house

mortgaged

mortgaged by the Respondent to Aga Moohummud Hoossain had remained in possession of him or of his wife, Appellant, from the date of the mortgage to the present day.

The condition of the mortgage was, that the mortgagee could at any time demand his money on giving the mortgager five months' notice; was it a thing to be any way credited that if Hajee Dulneem had really redeemed the mortgage on the part of the Respondent, that the Respondent would have allowed the possession of the house to remain with the Appellant, nor even now come forward to claim it until Appellant had been obliged to file a Suit to recover the debt.

The Appellant was rather singularly situated, since she was not the widow, but the wife of Aga Moohummud Hoossain, who, if alive, was undergoing a sentence of transportation for life, and therefore could never legally appear in person and claim the Debt. Upon a verbal reference to the Qazee of the Court, as to the extent of the Appellant's capability to maintain this action and recover the Debt, he stated that while she was content to remain the wedded wife of the banished man, and did not take means to divorce herself (which it was admitted she had not done, but continued the wife of Aga Moohummud Hoossain) she was legally capable of maintaining the action, and recovering the Debt sued for.

The Sitting Judge was fully of opinion that the defence set up in the lower Court by the Respondent was fictitious, and had been supported by false swearing; and that the Register's judgment should therefore be reversed and a Decree made in favor of the Appellant.

There were ample grounds for directing the witnesses Ubdool Ruheem and Ubdool Humeed to be prosecuted for perjury, and he referred the whole matter to a competent Court.

The Court agreeing with the Chief Judge in his opinion on the case, reversed the Register's Decree, and adjudged that Respondent

Competent Court, J. Sutherland, *Second Judge.*

E. Ironside, *Third Judge.* Decree 20th Dec. 1823.

Respondent should redeem the house agreeably to the terms of the mortgage Bond and paying Costs in both Courts. A precept at the same time was issued by the Sudur Udalut in their criminal capacity, directing the Criminal Judge to bring to trial Ubdool Ruheem, with Ubdool Humeed and Respondent Shekh Buhadoor; the two first for perjury, the latter for subornation of perjury with intent thereby to defraud.

N°. 129.

BABJEE BULLAL VANUS.....Appellant,

VERSUS

RAMAJEE NARAYUN KURMURKUR...Respondent.

South Konkun Udalut, V. Hale, *Judge.*

In a case when the Koolkurn of the two villages of Nachune and Joove in the Rutnagiree Talooka were sold to Respondent by the owner with consent of the coparcener, (Appellant's Father), then in the Dukhun, and where Respondent was ousted of possession by Appellant. It was held, that the sale was good against Appellant, his father being allowed a right of action to set aside the alleged sale, if false.

THE action was laid by Respondent in the South Konkun Udalut, and filed on the 13th June 1822 in the amount of Rupees 1,251 to recover possession of the Koolkurn of the Villages Nachune and Wara Joove in the Kuryat Nioore, Talooka Rutnagiree, sold to Respondent and two of his relations for Rupees 1,201 by a Deed of Sale dated 5th Jesht Vud 1743 or 20th June 1821 by Naro Balajee Vanus. The sale was effected at the Town of Sanglee in the Miruj Prant (South Muharatta Country) with consent of Appellant's father, and was afterwards registered in the South Konkun. Respondent got possession under the sale and held the offices until ejected by an order which Appellant had obtained from the Assistant Collector at Malwan upon the Sur Kumavisdar dated 13th Magh Vud 1743 or 19th February 1822 for his ejectment. The sum of Rupees 50 claimed above the amount of the sale was for the Huq, or office Dues, Rupees 13, and Profits arising from it Rupees 37 for the year of ejectment.

Appellant in answer denied that Naro Balajee Vanus had any

any right or title to the Office claimed by Appellant as sold to him by that person, and as it belonged to Appellant alone any sale by Naro Balajee was invalid. When Appellant discovered that the Deed of Sale was proclaimed for Registry he got an order upon the Kumavisdar and stopped Respondent's further proceedings.

Respondent explained that Appellant's father and Naro Balajee were first cousins descended from a common Grandfather Khundo Punt. Khundojee had five sons, of whom the eldest Balajee and youngest Gungadhur alone left issue, the above Naro Balajee who gave Respondent the Deed of Sale being son of the eldest, and Appellant grandson of Gungadhur the youngest, by his son, named also Balajee or Bullal, and that Naro Ballajee, as son of the eldest brother, had full power to dispose of the Wuttun, his father having had a joint interest in it. Respondent offered to proved that Naro also managed the Wuttun, and that he himself had held possession of it under the Sale till ejected by Appellant.

Respondent gave in the following documents: A Sunnud, or receipt for Rupees 300 as Shireenee, or Douceur, received from Ballajee Khundojee for settlement in his favor of a dispute between him and another person of the name of Vurtuk respecting the office now claimed. The receipt was dated 17th Rubee ool Akhur Sullas Sittueen A. D. 1773, in the name of Madhowrao Pundit Peshwa.

The Draft of a Deed of Sale executed at Sanglee by Naro Balajee, and signed also by Appellant's father Balajee Gungadhur and dated 11th Phalgoon Sood 1742, or 14th March 1821. Respondent's relation Huree Gunes Kurmurkur was therein named the purchaser of Naro Balajee's share, and it was stipulated that the Sale should take place in the Konkun.

A Paper dated next day passed to Huree Gunes by Appellant's father, giving his consent to the intended Sale.

Another from the same to the three Kurmurkurs, Huree, Gunes, Balajee Babajee, and Respondent, on the day of the Sale, explicitly declaring that he had been offered by Naro Balajee the refusal of his share of the office under his right of pre-emption for Rupees 500, but had declined, and now gave his full and free consent to the purchase of it by Respondent.

The Deed of Sale particularly specified that the terms of the Sale had been agreed upon at Sanglee with the concurrence of Appellant's father, but that conceiving stamped paper and Registry requisite to the validity of a sale of land situated in the Konkun, it had been drawn out afresh by the writer, Naro Balajee. To this of course Appellant's father's signature was not taken, as he was at Sanglee in the Dukhun. It was dated 22d December 1821. (It is difficult from these two Deeds to say which was the Deed of Sale and where the money was given, for in the latter the money is said to have been already paid at Sanglee, whereas in the former no receipt of money is mentioned.)

A Letter from Appellant's father to himself, (probably put into Respondent's hands for delivery) peremptorily ordering him to resign the office because it was sold to Respondent, and not to bring a charge of bad faith on the family by detaining what they had disposed of.

Appellant on his part exhibited accounts for several years, to shew that the office had been in his possession.

The khot of the village proved surrender of the koolkurn to Respondent under the Sale by order from Appellant's father and Naro Balajee in a letter to the village. He at the same time admitted that since he could recollect, the Respondent had till then never held the office, and it was taken again from him by an order from the Collector, and restored to Appellant.

Another

Another Witness proved the hand writing of Appellant's father in the letters said to be from him. One of Appellant's witnesses declared he was present when the Registry was talked of, and Naro Balajee declared to him that the money had not been received, and begged him to get the matter settled. Respondent's son said it would be paid when the office was fairly made over to them but not before. Witness deposed also to a confession by Naro Balajee that the sale was a fraudulent one, and that 400 Rupees only were to be paid, though the price was put down at Rupees 1,200. He added that Respondent's son had provided the security to Government usually given by the khot, whose evidence was therefore partial.

The Deshkoolkurnee proved that as long as he could recollect, Appellant, his father, and uncle, had managed the office which he must needs know because it was his duty to receive the village Koolkurnee's accounts and forward them to the Government authorities.

Other evidence was adduced to prove that Appellant alone had held possession for the last three years.

The Court observed that it did not appear that Naro Balajee was ever in possession of the Wuttun before he sold it, and could not believe that it was ever delivered to Respondent by Appellant, first because it was very improbable that Appellant would relinquish it quietly when he denied Naro Balajee's claim upon it; secondly, because Respondent might easily have proved it by the Kumavisdar who dislodged him, had he ever enjoyed it. There must be some underhand dealings between Respondent and Naro Balajee, because it was obviously the business of the latter to secure possession of the property before he sold it to Respondent, and because payment of the large sum of money for the Wuttun was not proved; and thirdly, because a situation of 13 Rupees per annum could not fetch the price of 1,200 Rupees. On the whole therefore the Court conceived that Naro Balajee could not

legally

legally sell the property until his own right to it was established, and he was in possession, and that therefore the Deed of Sale held by Respondent was not a sufficient title to the property. In this view of the Suit it was dismissed with costs.

Decree 10th July 1822.

Sudur Udalut, *Sittings at Rutnagiree* before T. Barnard, *Fourth Judge*.

It was stated by Respondent in his appeal for reversal of this Decree that Naro Balajee from whom he bought this Office did perform the duties of it between 30 and 35 years ago, since which they had been performed by Appellant's Uncle and Father, Cousins of Naro Balajee, till within four years, when it was taken up by a Goomashta of Naro, the seller, this Goomashta being the Appellant.

Respondent denied that Naro Balajee had ever performed these services. It was in evidence by the Kumavisdar that Respondent had conducted the business for a short period lately, and another witness deposed that somebody conducted it for Naro at that time, and that Respondent's Father wrote to say the office was sold to Appellant and his Brothers. Another had deposed that certain letters were in the hand writing of Appellant's Father, and these clearly stated the writer's concurrence in the sale to Respondent, and as Appellant had no actual Proprietary Right during the life of his Father, (1) the Sale was thus made as complete as possible. Appellant's evidence only went to prove that the business of Koolkurnee had been conducted without intermission by himself and family. This did not apply directly to the issue, but it was contradicted by Respondent's producing a list of directions how to collect the dues which was declared to be written by Appellant himself. Appellant had in fact no business as a party in this suit; his Father then, as formerly, was the proprietor, and there was a mass of evidence to prove his Father's concurrence in the Sale. It was also worthy of remark that there was no measure adopted in the litigation by the Father, either as witness or petitioner,

(1) See Note to Vol. 1st page 871; and *Cole. Mit.* pages 276 and follg. for the law. The custom of the country may be different, but it is as yet unascertained.

tioner, or otherwise. It was therefore decreed that the Sale be confirmed and Respondent pay Costs, the Zilla Judge's Decree being thus reversed.

Decree 9th Dec. 1822.

The Sitting Judge was not satisfied with either of these decisions. The Zilla Judge had gone too far in negativing a sale opposed by the Appellant, because in his Father's life time he was not competent to the act without his special authority, and on his part, more particularly since it was alleged, and proof had been offered, that the father consented to the sale and witnessed the first Deed of Sale.

Sudur Udalut, *Sitting Judge.* J. Romer, *Chief Judge.*

On the other hand the Fourth Judge had found for the validity of the Sale without the presence of the alleged joint proprietor, the Appellant's Father, in Court, or having an opportunity of proving what his son in these proceedings must be considered incapable of doing alone.

Upon these grounds the Sitting Judge was of opinion that as the primâ facie evidence brought by the Respondent of the validity and fairness of the Sale, and of Naro Balajee's power to effect it, was strong, the Fourth Judge's decree should be amended to the extent of ordering the Respondent to be put in possession of the Koolkurn of the Villages sued for, leaving to the Appellant's Father the right of action to oust him and to recover all such rights and titles to the Koolkurn as he might be able to prove to be justly his. The cause was accordingly referred to a competent Court.

The Court amended the decision of the Fourth Judge conformably to the view taken of the case by the Chief, adjudging that Respondent be put in possession of the Koolkurn, but Appellant's father having the right of an action to oust him and to recover all such right and title to the Koolkurn as he might be able to prove justly to belong to him. (2) Appellant to bear Costs.

Competent Court, J. Romer, *Chief Judge,* E. Ironside, *Third Judge.* Decree 15th Jan. 1823.

No. 130.

(2) It will be a good opportunity for ascertaining both the Hindoo Law and Custom of the

N°. 130.

SHEKH HUMEED OOD DEEN.....Appellant,

VERSUS

NUZUR-OOD DEEN and NIYAM OOLLA..Respondents.

Surat Udalut, J. Vibart, *Register.*

Suit by a Moohummudan against the heirs of a woman deceased, for fifty three and a half beeghas of Wuzeefa land, his property under a Deed of Gift by her. Dismissed by both Courts.

THE Appellant laid his action in the Zilla Court on the 27th December 1822 in the amount of Rupees 1,000 as ten years' rent of fifty three and a quarter Beeghas of Wuzeefa land situated in the Villages of Mogur and Modan, Purgunna Soopa, bestowed upon him in a Deed of gift by Zeboon Nisa who had received them from her own Father Mulik Ghyasood Deen. Appellant said that Zeboon Nisa, who had brought him up from a child in her own house as her son, retired during the former incursions of the Pindarees with him to Surat, and let this land to the Respondent Niyam Oolla for Rupees 157, gross rent, out of which Rupees 100 were to be paid as nett rent to her. On the 15th Rubee ool Uvvul A. H. 1225, she executed a Hibbeh Nama in his favor, and in virtue of it Appellant had demanded the rent from Respondent Niyam Oolla, who urged that a suit had been filed by one Nusrood Deen against both of the Respondents for a share of Zeboon Nisa's property and he could not pay him until it was decided. Appellant now pleaded that Nusrood Deen had claimed the share of his father and uncle, and had obtained a decree long ago, wherefore Respondents were at liberty to pay the amount of rent for which he now sued.

Respondents answered that Mt. Zeboon Nisa was maternal aunt of the one, Niyam Oolla, and first cousin of the other, Nuzur

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the Country regarding the legality of alienation of the Heritage by one Coparcener alone, under what circumstances, whether with or without the attestation of the other Coparceners, and whether consent of the son (Appellant) to his father's alienation of Ancestral property, either before or after separation, is requisite or not.

zur ood Deen. That she never did adopt Appellant, who was nothing more than her servant, and never executed any Hibbeh Namu in his favor. The story of their having rented the ground of him was equally false. Respondent Nuzur ood Deen on his own part said Mt. Zeboon Nisa left two Heirs, himself, and her own Sister Fatima, who on the death of Zeboon Nisa shared her Estate between them. Fatima afterwards sold both her own Estate and what she had received from her Sister's estate, to Respondent Niyam Oolla, on whom Respondent also had bestowed all his own property by a Deed of gift in 1225, under which Respondent Niyam Oolla had possession to that day. Now under their law a Deed of gift was not valid without possession, and that Deed upon which Appellant pretended to found a title must be declared null, because occupancy never had followed it.

It came out in the course of the trial that Appellant had passed a Deed of gift of the land in dispute to his Mookhtiyar, Nusrood Deen, the very person named in his plaint, which the Court thence conceived had been collusively filed to give Nusrood Deen possession by one action instead of two, whilst Appellant at the same time admitted that if the Deed of gift had not been passed in his favor by Zeboon Nisa, Respondent Nuzur ood Deen must have succeeded as heir at law. He admitted likewise that he had never received possession of the ground further than having the Lease drawn out in his name.

Respondent Nuzur ood Deen denied that he ever executed the Lease, and exhibited a Farighkhut passed to him by Appellant for 20 Rupees expended at his desire on the funeral ceremonies of Zeboon Nisa in Surat, shewing by this that Appellant could not have then considered himself adopted son of Zeboon Nisa when he passed an acknowledgment for repayment of money expended on her funeral on account of another person. This paper was denied by Appellant. Another receipt to the same effect, was admitted by him, but said to have been passed on account of rent. The

The Court after recording evidence in the case asked the Moohummudan Law officers to examine the Hibbeh Namu and Lease, and state whether the former Deed were valid and according to law or not, and in case possession under it were required, whether the Lease would be held to convey such possession?

They answered, that if the land bestowed in the Hibbeh Namu were joint property, the Deed was not valid, because gift of joint property was not permitted. If the Donor, having separated his own share, should give it away and the Donee should take it in possession, the gift would then be valid. For in their Law possession was an indispensible part of a gift, which was not valid without it. The possession by Appellant they held to be proved by the Lease.

Only one witness out of four who attested the Lease gave evidence respecting it.

The Court found that Appellant had not proved his case, a strong feature in which was that he had allowed ten years to elapse without claiming payment of the rent due, though he sued as a Pauper. The Suit was dismissed, Costs being recovered from any property Appellant afterwards was found to possess.

Decree 11th April 1823.

Sudur Udalut, *Sitting Judge.* J. Romer, *Chief Judge.*

The Court held with the Zilla Court that there was no proof which could be relied on that the lands were ever transferred to the possession of Appellant, or that he enjoyed any income from them. It was clear that they had been in possession of others for a long series of years, and as it was necessary to the validity of a deed of gift that possession should follow within a reasonable time, which had not occurred in the case, the Zilla Decree was affirmed against Appellant with Costs.

Decree 19th Jan. 1824.

No. 131.

N°. 131.

JUGJEEVUN VENEEDAS,.....APPELLANT,

VERSUS

KULYANCHUND MANIKCHUND,....RESPONDENT.

Surat Udalut, W. A. Jones, *Register.*

Case of Avuk Viyajee, or Interest Respondentia.

THIS Suit was filed on the 20th July 1819, in the Zilla Court by Respondent, who sought to recover from Appellant the Sum of Rupees 299, of which 294 was principal, and the rest interest, of a Bond of Avùk or Respondentia.

The Bond ran thus, "Sunday 6th Phalgoon Vud 1873, or "9th March 1817, I Pranwullubh Jugjeevun write to you Kulyan- "chund Manikchund, that I have received from you an Avuk "Viyajoo, or interest Respondentia Bond, for Rupees 316-2-0 "and have made upon it an advance of Rupees 294, on a voyage "of the Grab Futteh Suwaee, owner Adumjee Sooltan Bhaee, "from Surat to Goommur and back. If the vessel returns in "safety, this advance shall be deducted from your Bond now "deposited, and I will take the balance that may remain over. "Interest is to commence 34 days after the Second Asvin Vud, "and run at one quarter Rupee per Cent per month, to be "charged by both parties. Negotiated through Broker Ruseek- "das."

The interest Respondentia Bond alluded to as deposited with Appellant, was made payable "*to bearer*" by Respondent on the usual terms (vide Respondentia Bonds in other Cases). It was dated 5th Phalgoon Sood, 21st Feb., or fifteen days prior to the above.

Appellant in answer pleaded that his Bond was upon goods, and did not relate to any transaction with the sailors, which was the plea on which Respondent came upon him to recover. He was perfectly ready, as he had also told Respondent, to make up the account in the usual way, if Respondent would

would prove the value of his goods on board the vessel. He referred at the same time to a Decree of the late Court of Appeal respecting insurance.

The Court held that as there was no mention in the Bond either of goods or advances to the sailors there was no necessity for examining, as Respondent proposed, the custom of making advances to the sailors. Nothing was proved due on this account, and no goods were specified in this bond; therefore the claim was dismissed with leave to sue again in the terms of the Bond, since Appellant did not deny the claim, but only objected to the ground of it.

Decree 24th Dec. 1824.

Judge's Court in Appeal, G. W. Anderson, *Judge.*

The Respondent was called on by the Judge in appeal to prove that he had made any advances to the sailors; also what the custom in this respect was, and that he had shipped goods on the vessel.

In proof of the first, he produced the Bond passed to him by two men of the vessel on the 9th Magh Sood or 26th Jan. 1817 for Rupees 281-2-0 as Respondentia on the voyage out and home in the usual terms.

These two persons proved the Bond in Court as well as shipment of goods to the value of 240 Rupees out of this sum, they receiving the balance in cash. An entry to the same effect was found in Respondent's Books.

Merchants were called to prove the custom of the trade, and asked, where a man advances money on a Respondentia Bond to the sailors of a vessel, and again takes another Bond of Avuk Viyajoo from another person, and the ship is afterwards lost, whether, in case the sailors should not pay the money, the amount of the Bond would be demandable from the person who gave it, or from the sailors who received its amount? and how the custom held the lading of goods to affect the validity of the transaction?

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They answered, the person who wrote the Bond, whether sailor or other person, would be obliged to pay the venture, less the amount saved, provided it were proved that the goods were shipped. If goods were not shipped, the insurer would not be bound to pay.

They were again asked, whether the Avuk Viyajoo holder would be bound to pay the loss in case the sailors taking up Respondentia failed to ship goods?

They declared that in such case he would not be liable.

In explanation of this conflicting evidence, they replied that it referred to a case where the vessel (the Durya Dowlut) itself was lost, and no proof of loss in goods was then required. But in this instance where the vessel was saved, proof of loss was required by showing the quantity of goods lost.

The Court observed that Respondent had proved his case. and was entitled to recover, and a Decree was passed in his favor, reversing that of the lower Court and granting him the amount of his Bond with interest up to that date, with all costs of suit from Appellant.

Decree 8th Feb. 1823.

The Sitting Judge took the following review of the case. This Suit is founded on certain transactions between the parties named Avuk Viyajoo. From what appears to the Court, this Avuk Viyajoo consists of two persons passing to each other notes of different amounts to be recovered on some future contingency from only one of the parties, accordingas events may turn out.

Sudur Udalut, *Sitting Judge*. J. Romer, *Chief Judge*.

In the present case the Respondent gave and advanced goods and cash to the sailors of the Futeh Suwaee to the amount or value of Rupees 240, and took from them a Respondentia Bond for Rupees 281-1-0 including premium and profit. To ensure this venture he passes an *Avuk Viyajoo* note to the Appellant for Rupees 316-2-0, and receives from the latter a similar engagement for Rupees 294, the conditions of the notes and transactions being that if the ship arrive safe the

Appellant

Appellant is to receive from the Respondent the difference between Rupees 294 and Rupees 316, or Rupees 22-2-0, the condition of the latter note which he holds having been completed and the instrument no longer exigible against the Respondent. If the ship is lost, then the amount of the same note is no longer demandable from the Respondent, but the note for Rupees 294, which he holds of the Appellant, is exigible in its full amount, and must be paid by the Appellant.

In this transaction it is clear that the Appellant's gain cannot exceed Rupees 22-2-0, which may be taken as the rate of premium at which he ensures the possible loss of Rupees 294.

But the Respondent ensures not only his profits but provides against the possibility of any loss, by a mode which in fact renders the loss of the ship the most advantageous event for him.

It will be seen that, on the safe return of the ship, the Respondent pays the difference between the amount of the notes, or Rupees 22-2-0 to the Appellant, returns the note he holds, and receives from the Appellant the note held by him; deducting this sum from Rupees 281-1-0, the amount of the Respondentia note passed to the Respondent by the sailors, which is now payable, Rupees 258-3-0 remain, that is, a return of Rupees 18-3-0 upon the original advance of Rupees 240.

If the ship be lost, the Respondent has no claim upon the sailors under the Respondentia Bond; but he comes at once upon the Appellant for the amount of his *Avuk Viyajoo* Note of Rupees 294, which being payable without any deduction, produces a return of Rupees 54 upon the original out-lay of Rupees 240, thereby, as before observed, making the loss of the ship a more profitable event to the Respondent than her safe arrival.

It may be said that as the Appellant voluntarily ventures into such an engagement, he must abide the consequences, and this is true. The most objectionable part of the transaction is the higher profit derived to the Respondent from the loss of the ship

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on which the venture is made than would have accrued from her safe return.

There are however two points upon which the appeal is founded, which require further investigation. The first is, that it has not been satisfactorily proved that the engagement between the parties rests upon a bonâ fide transaction of the Respondent with the sailors, in giving them goods or advancing money to them. The second, that the sailors saved the returns of their outward venture, or some part of them, and such saving ought to be accounted for in settling accounts.

As the Nakhoda of the vessel could probably afford some information on both these points, and the Sitting Judge had received, when Judge of the Zilla of Surat, a written account from Captain Grant of the Bombay Marine detailing some particulars of the loss of the Grab, the cause was laid over to allow the parties time to obtain the information above indicated.

From the papers mentioned, it appeared that besides dollars, with which the vessel was freighted, recovered from the wreck, there was some wax, sandal wood, and tortoiseshell.

The returns of the sailors were partly made in wax and sandal wood, but they did not appear to have claimed or received any share in the property or proceeds of it saved by Captain Grant when it was delivered over to the merchants and insurers.

This made the total loss on the part of the sailors doubtful; for they had an interest to conceal any thing they might have saved, that their Respondentia Bond might be unexigible against them, whilst justice required that they should account for whatever they might have saved.

But this doubt of the honesty of the sailors would not go the length of freeing the Appellant, who must stand by his contract,

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and in the absence of direct proof to the contrary the total loss of the sailors' return venture must be considered as established.

Upon these grounds the Judgment of the lower Court was affirmed.

Decree 25th Feb. 1824.

N°. 132.

RUVEE BHUDR SHEO BHUDR.....*Appellant*,

VERSUS

ROOPSHUNKUR SHUNKERJEE AND BHUWANEE SHUNKER TOOLJA-SHUNKUR.... .....

with

RUTTUNKOONWUR, Widow, and POORUN BHUDR adopted Son..... *of HUREE BHUDR*,

} *Respondents.*

WITH the exception of the two first named Respondents, all the parties were at Bunares. This action was filed in the Surat Udalut on the 24th June 1819 for a Lak of Rupees on the following account.

Surat Udalut, G. W. Anderson, *Judge*.

Claim by Appellant for possession of the village of Burachee in the Oolpar Purgunna.

Dismissed under a decision by the Peshwa granting the whole village to Respondent's for a certain time.

The right of Respondent Ruttunkoonwur eventually to retain half the village, declared both by the Zilla Court and by the Sudur Udalut.

The Peshwa bestowed the village of Great Burachee in the Oolpara Purgunna in Jahgeer upon Appellant's grandfather Wamun Patuk in A. S. 1810, or A. D. 1754. Wamun Patuk left two sons, the eldest named Sheo-Bhudr, the father of Appellant, and the youngest Balmookoond. This last had a son Vijue Bhudr, whose son Huree Bhudr, great grandson of the Grantee, died childless in A. S. 1860, or A. D. 1804, and his widow Ruttunkoonwur without consent of the Cast adopted her own brother Poorun Bhudr to be the son of her husband. The parties then went to Poona, the widow to get her brother put in possession, Appellant to prevent it under the plea that Huree Bhudr dying childless and the adoption being illegal, he alone, as sole surviving descendant of Wamun Patuk, was entitled to the

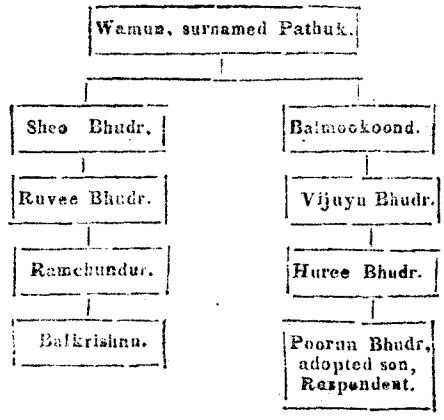
the whole village. The Peshwa in A. S. 1862, passed an order against the widow's claim, but awarded to her an allowance for maintenance of Rupees 1,000 per Annum, at the same time giving up to Appellant the half village then attached in consequence of the dispute. In A. S. 1867, Ruttunjee Pundia (Mokhtiyar of Respondents in the present suit) went to Poona on their part to endeavor to obtain a fresh order, and by his interest got the cause referred to Khoorshedjee Modee, who also passed a decision against Respondents, granting the widow however an addition of Rupees 500 to her salary. From this time Appellant held possession of the whole village until 1872, when Respondents got him confined and the village attached. From this the present dispute commenced, and Appellant was about to proceed to Poonah when the country came under the dominion of the Company, and now he laid his action at a Lak of Rupees, for recovery of the whole village, yielding Rupees 10,000 per Annum, the value of it at ten years' income being one Lak.

The two last Respondents answered that Wamun Patuk himself received the village from the Shahoo Raja in Sree Krishnarpun, and during his own life time made an equal division of it in A. S. 1826, between his two sons, who, with their respective descendants, had held each share perfectly distinct under Farighkhuts duly passed in presence of the Peshwa. They urged that the adoption was not made by Ruttunkoonwur, but by her husband Huree Bhudr during his life time in presence of many people at Bunares, where Appellant himself resided at the time. They admitted that Appellant took possession of their half share from their agent in A. S. 1862, and held it until A. S. 1872, when they complained to the Peshwa, before whom a regular investigation took place respecting the adoption, and a Niwar Putr or Decree was passed on the strength of it, granting them an order for the payment of the whole of their loss caused during the ten years' illegal possession of the village by Appellant, or the possession of the whole village until they had reimbursed themselves from Appellant's half, after which Appellant's

lant's half of the village was to be restored to him. This decision was put into execution by delivering over the entire Village to them, and Appellant wrote them an agreement in confirmation of this measure, declaring that he could not muster the money to pay them. They urged therefore that they were not liable to be dispossessed of Appellant's half of the Village until reimbursed for their loss, but declared themselves ready still to resign it if Appellant chose to redeem.

The other Respondents pleaded that Appellant had shewn no cause whatever for including them in this action, and prayed the Court to excuse them from its defence, for they were then in confinement for Security without owing Appellant any thing. Appellant in reply admitted that Wamun Patuk divided all his property among his heirs in his life time, with the exception of this Village of Burachee, which, he maintained, had to that day never been divided. He confessed also that Huree Bhudr himself performed the adoption, not of his Wife's brother, as he had by mistake stated, but of that brother's son. It was without Appellant's knowledge or permission, and adoption was not only not permitted in their Cast, but the adoption of the son of a brother-in-law was contrary to the Shastru, besides that he was only three years old, and uninvested with the Janvee or Brahminical string; Appellant added that the agreement passed by him for surrender of the whole Village was extorted from him by violence. For all these reasons he claimed recovery of the whole Village.

The genealogy of the family thus laid down was not disputed.



The Court finding that each party claimed the advantage of a decision in their favor by the former Government, resolved first to ascertain whether these decisions were passed under such circumstances as to render the Court incompetent to further proceedings. Respondents were therefore called on to produce the Niwar Putr, or decision of the Peshwa, under which they claimed the right to retain possession both of their own and of Appellant's half of the Village. It bore date 17th Jumadee ool Akhur Suba Ashur Miyaten wu Uluf, or 5th May 1817, and commenced with Respondent's statement of their case, in which it was among other things declared, that Wamun Pathuk divided every thing in the year A. S. 1826 under a Vyuvustha Putr, or Deed of Settlement, which was afterwards affirmed by a Hoozoor Punchayut on dispute between Appellant's father and Vijuyu Bhudr, who were each put in possession of half the Village. The reason assigned by Respondents for the adoption by Huree Bhudr of Respondent instead of one his own Sugotru Supindu, or Paternal Relations within the seventh degree, was, that Ruvee Bhudr, the Appellant, had only one son, and Chundru Bhudr, another Sugotru, had refused to surrender either of his two Grandsons. The decision by the Modee in favor of Appellant was declared to have been obtained " by misrepresentation to his Highness " and bribes to the Modee," and annulled by a subsequent order

order from the Peshwa for putting Respondents in possession of the whole village until their loss by Appellant's ten years' possession had been made good. "Respondents," in concluding their statement, "having prayed the Peshwa to confirm "this order by a regular Niwar Putr, the documents of Res- "pondents were now *examined* and *recorded*, as well as the "arguments on both sides, and the adoption having been "fully canvassed, with the opinions of the learned on the "subject, declaring that the adoption of a wife's brother was "not forbidden in the Shastru, and that the adoption of a "brother-in-law was not voidable," it was found "that the "adoption of Respondent Poorun Bhudr was approved, both "by Wamun Pathuk and by his wife Adityu Baee" (vide No. 50 of the Bombay Cases) "and the exception now taken "to it by Appellant was unmeaning and inadmissible; that "the adoption in other respects also was valid, and all former "acts in favor of Appellant were null and void. It was de- "creed that Respondent stood in every respect in the light "of Huree Bhudr's son, entitled to perform all religious acts "as such, and to succeed to his inheritance, and that Huree "Bhudr's half of the estate left by Wamun Pathuk therefore "belonged to Respondent, who was to be put in possession "of one half of every thing. To confirm his title, this Ni- "war Putr was granted, declaratory of his being in the light "of a son to Huree Bhudr, and he was directed to look upon "that person's widow Ruttunkoonwur as his mother and to "obey her, and throwing off all love for his natural father, "to manage the village under her directions, as long as she "lived, and to furnish her yearly with accounts of it. He "and his posterity for ever were to retain possession of that "half of the village, and the rest of the estate of Wamun "Pathuk, which had come down through Balmookoond to "Respondent's adoptive father Huree Bhudr. With respect "to the claim for remuneration for Appellant's forcible deten- "tion of the Respondent's half of the village of Buraehee dur-

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" ing ten years, it was declared to be just; and as the vil-
" lage had already been put into Respondents' hands by an
" order to the Vinchhorkur, it was now further settled, that as
" much produce as Appellant had for so many years enjoyed
" belonging to Respondent, so much must he make good with
" interest at 12 per cent per annum, or in default Respon-
" dent was to hold the Appellant's half of the village until
" the produce of it had cleared off this claim, both principal
" and interest, when each party was to take his own share,
" and conduct it according to law in every thing."

Appellant represented by motion to the Court that the adoption of Poorun Bhudr, did not affect the case, for he had by the advice of the learned at Bunares where he then lived, formally renounced his adoption and taken again the name of his real father.

In proof of this a letter was exhibited from Poorun Bhudr at Bunares. It was dated 4th Phalgoon Vud 1878, or 11th March 1822, addressed to Appellant Ruvee Bhudr by Respondent Poorun Bhudr under his real name (before he changed it for that of his adoptive father) of Guneshyam Keshouram Turwadee, notifying that he had renounced his adoption because it was disputed by many persons in the Cast, and he had for some years been obliged to remain in the smaller schism in consequence. He explained that being now grown to man's estate, and feeling the inconvenience to which he was subjected by an act to which he was in nowise a party, being a child at the time of the adoption, he had represented his case to the Cast, but they would not hear of his readmission (as Poorun Bhudr). A general meeting had been held, and he having subjected himself to their determination, it had been thus arranged. Seven Pundits, with Vinaik Diksit at their head, met and performed his Sunskar, or Regenerating ceremonies, anew, reinvested him with the Janvee or Brahminical thread, and gave him his original name. He in this letter avowed that

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he had no further connexion with Huree Bhudr's estate; that he neither could claim any thing from it, nor would pay any of its debts. He disavowed the Mokhtiyar Namu produced by Ruttunjee Pundia in his name, and that produced by Respondents Roopshunkur and Bhuwaneeshunkur, and he professed, that his object in giving this notice was to prevent Appellant's sustaining loss by any of their acts done under his name.

With this letter was produced a Mehuzur or certificate dated 11th Jyeshth Vud 1879 or 4th July 1823, and signed by ninety five persons in the name of the Ahmudabadee Vurnugur, or Udhivyasee, Nagur Brahmun Cast, testifying to the fact as above stated by Poorun Bhudr, and clearly declaring that it had never been an adoption.

Respondent admitted having heard from Ruttunkoonwur (also at Bunares) that renunciation of the adoption had taken place, but they urged that it was not permitted by the Shastru.

The Court held that no doubt of the fact of resignation existed, but required the Shastrees to state whether in the present Case the adoption by Huree Bhudr of his wife's Brother for his son was valid, and if so, whether the son adopted could of his own accord renounce the adoption, and what would in that case be the rights of Ruttunkoonwur, as wife of his adoptive Father, in her husband's Estate?

They answered, If any one about to adopt should receive from one not related to himself in the male line, that person's son, and should perform his adoption according to the ceremonies of the Vedu, and after that caused his regeneration by performance of the Choora and Oopunuyunu Sunskar &c. (tonsure at three years of age; Investiture with the string at 5 or 8 years; and the remaining Regenerating ceremonies) in the name of his own Gotru, or Paternal line, that Son so invested with the lineage and Estate of the adopter has no right to keep up connexion with the other lineage, that is, he cannot return to his

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own. This from the Muyookhu &c. (1). Again, if the Estate of Wamun Pathuk had not been divided, then on the death of Huree Bhudr without male issue, his widow Ruttunkoonwur is only entitled to a place to live in and a maintenance; If on the contrary the two Sons of Wamun Pathuk, or their descendants, separated and divided the family Estate, both real and personal, and Huree Bhudr got possession of his share of the divided property, then, if he left no Son, Rutr tunkoonwur is sole Heiress to his Estate both real and personal. The name of a Brother-in-law is not mentioned in the Shast among those whose adoption is expressly forbidden, neither is it noted among those whose adoption is permitted.

The Court recorded of the Niwar Putr, that it recognized the adoption of Poorun Bhudr, and in virtue of that adoption his right, jointly with Ruttunkoonwur's, to half the village of Burachee; and in case Appellant refused to make good the Share of revenue for the ten years it was in his exclusive possession, that the whole village should remain in Poorun Bhudr's possession for a like and similar period.

Appellant gave in two documents from the Peshwa, which were rejected as bearing no remarks of authority. A third, being an order from the Peshwa dated Aseer 3d Zilkad Tissa Ashur Miyaten wu Uluf, or 5th September 1818, annulling the Niwar Putr, was then handed up. Upon this the Court remarked that the Peshwa at that date was no longer in possession of his Government, having surrendered himself to Sir John Malcolm on the 3d June 1818. It was therefore not only of no effect, but must be a fabrication, as the Peshwa was on that date on his way to, if he had not arrived at, the place of his retirement. (2)

Appellant

(1) Vide Bombay Cases No. 43, and Surat Cases No. 14.

(2) A remark in pencil on the Deed shews the Peshwa to have been at Mundusoor on the 7th August following. It may be added, that the seal on this order proves it, even without

Appellant next gave in a Certificate said by him to be from the Nagur Cast at Bunares, citing various examples to prove that in their Cast; both in separated and united families, the Brother of a person deceased succeeded to his Estate in preference both to his widow, daughters, and grand daughters. (But the authenticity of this is very doubtful, for the original was said to be at Bunares, and the doctrine of it is strangely contrary to the Shastru and to all the known usages of Casts, including those of the same Cast in Goojurat.) It concluded with an assertion that Respondent had no right to his adoptive father's share.

The Court thought no conclusion was to be drawn from this document.

The Will of Wamun Pathuk dated 7th Kartik Sood 1826, or A. D. 1770, was passed by him in favor of his wife Adityu Baee, specifying his wealth, with the amount assigned for Sheo Bhudr, for Vijuyu Bhudr, and to Adityu Baee, giving to Sheo Bhudr Rupees 1276 of the cash more than an equal share, as eldest son, and declaring that neither of the other two had any right or claim to what the widow had received. It was expressly declared that every thing both real and personal had been divided and Farighkhuts passed, a particular clause providing that the son and Grandson should equally divide the produce derived from the village of Burachee after providing for the necessary expenses. Two other villages named were said to be as good as lost, but if any thing was produced hereafter, it was to be equally divided between them.

Respondents then gave in,

The Decree of the Udalut recorded in No. 50 of the Bombay Cases.

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without comparison with the authentic one, to be a clumsy fabrication, roughly shaped and badly cut, whilst the production of such a document, though a forgery, is a full admission by Appellant that the Niwar Putr, of which it purported to be a reversal, was passed by the Peshwa.

The writing passed by Appellant on the 6th Bhadrapud Sood 1872, or 28th August 1816, to Ruttunkoonwur in surrender of the whole village to her (under the Niwar Putr) because he was unable to clear off by a payment in Cash the arrears declared against him "by the orders of the Government."

The Farighkhut passed by Appellant's father Sheo Bhudr to Huree Bhudr's father Vijuyu Bhudr on the 7th Ashadh Vud A. S. 1693, or A. D. 1771, on the award of a Punchayut, which declared that Sheo Bhudr had obtained his full share of Wamun Pathuk's estate, distinctly binding himself to claim no more, but reserving his right to receive henceforward a half share of the produce of Burachee, according to the distribution of Wamun Pathuk.

An order of the 21st Jumadee ool Uvvul Isne Subbaeen Miyat wu Uluf, A. D. 1772, by Madhow Row (Bullal) to the Kumavisdar of Surat respecting the dispute on the division by Wamun Pathuk.

The Court called on the Shastrees to state whether the property of Huree Bhudr would descend to his widow or to his Father's first cousin, in the event of Huree Bhudr's adopted son renouncing the adoption performed in his childhood, and throwing up his claim to the estate under it?

They said, As a lawfully begotten son may renounce his right to share in the Estate of his father, and does thereby lose it, even so an adopted son is at liberty to resign his right to the property of his adoptive father. This is distinctly declared in the 47th leaf (2d page 7th line, in the Text) of the Mitakshura, "The separation of one who is able to support "himself and is not desirous of participation, may be complet-"ed by giving him some trifle" (Cole. Mit. 262). (3) We have before said that an adopted son is not to be absolved from his

(3) Vide Note (3) to Case No. 2.

his engagement, but if he has refused to take the property, and if the property to which he succeeds be a share of a divided heritage, the adoptor's widow succeeds to it under the authority of the Mitakshura, "The Wife and the daughters also," (See Vol. 1st page 160) by which, as long as she lives, the First Cousin of her husband's father is debarred from taking the inheritance.

The Appellant prayed the Court to take any Books on the Dhurm Shastr and send for a Shastree named Duyashunkur, and to examine with him the above Vyuvusthas.

This was refused on the ground that the Shastrees of the Court were responsible for the right explanation of the law, and upon them the Court had to depend.

It appears however that he was summoned but not allowed to be examined when in Court, and to make up for this, the Appellant begged certain Extracts from the Shastr might be submitted to the Law Officers of the Court. They were in Sanskrit, most probably the work of the same person, and may be called his Vyuvustha, as follows.

"The Wife becomes holder of the wealth." On this point the Muyookh says, "These are the words of Bru-
"husputi, "Whatever wealth there may be, of what-
"ever kind, that is heritable in a divided Estate, that
"shall the married woman" (Jaya) "obtain after the
"death of her husband, excepting the immoveable part
"of it." Again, "Even if virtuous, and if partition have
"been made, a woman is not capable of receiving real
"property. This relates to a Wife having no daughter,
"since a woman having a daughter in that case succeeds
"even to real property, according to the Smriti Chun-
"drika." (1) This must therefore be taken as the decision of this Book (the Muyookh) because it has not refuted the authority.

(1) This is part of the passage alluded to in the Errata to Vol. 1st page 58.—

authority. In the Dinkurodyotu there is this further difference, " She obtains all wealth excepting Land, " Houses, fields, inherited Possessions, Books, and all " other (things denominated) Immoveable Property." " In the Vyuvuhar Purisishthu (2) also, " The saying " of Bruhusputi" (above) " forbids the receipt of real " property. However, on account of the use of the " word Jaya generally for any married woman, it relates " to a woman married by the Asooru and other three vile " Rites of marriage, thus some one has decided. The " word Putnee, lawful wife, is not allowed to be used " for a woman married by those (four) Rites. In all the " Texts in which the word " Jaya" are contained " therefore, that has one and the same origin with that " form of marriage, from which cause it has been set aside " by the Smriti Chundrika. However this decision pro- " nounced by me, and by the Smriti Chundrika declared " inadmissible, is not to be so branded, for if there be a " daughter, then, as by means of this issue she has the " right of Usufruct of immoveable property, and obsequies " of the former owner of that property, so even immoveable " property may be taken by a woman having a daughter." But as these two privileges are not permitted to a woman having no daughters, so she cannot take that immoveable property. Thus again, on the subject of Dan Dhurm in the Muha Bharutu, (Vide Cole. Dig. 3d 467,) " Simple " enjoyment is declared to be the fruit which women " gather from the heritage of their lords; on no account " should they waste the estate of their husbands." " Enjoyment also does not consist in fine clothes, &c. How then? Whatever is needful at her lord's obsequies for her personal appearance only. Narudu says, " A woman's husband being dead, his relation is lord of the widow, if without

(2 Now known to be the same work as the Veermitrodayu, mentioned by Mr. Colebrooke.

without male issue. He is her master in commands, in custody, and in maintenance.

The husband's relations being all dead, and the widow being without male guardian or protector, and there being none of his Supinda, then her own Father's relations are the woman's lords. Also in the Mitakshura (therefore it is a settled rule that) a wedded wife being chaste takes the whole estate of a man, who, being separated from his coheirs and not subsequently reunited with them, dies leaving no male issue. All the Books above named agree in the point quoted from them.

The Court now laid this before the Shastrees for their answer.

They declared, The saying of Bruhusputi is certainly recorded in the Books on the Shastru, but it rests on no good foundation as declared in the Vyuvuharu Purisishthu itself. If it were to be at all admitted valid, it could only be in respect to a Woman married by the Asooru, Rakshus, Paeshach, and Gandhurvu, Rites, not to one married under the Brahmyu, Daevu, Prajaputyu, and Arshu, forms of marriage, as is declared in detail in all these Books, particularly in the Vyuvuharu Purisishthu itself, both before and after the passage which he has quoted, concealing those in opposition to it with a view to deceive others. It is not for us to speak our opinion of this mistake of his. The conclusion drawn on the subject by the Mitakshura and other celebrated Books is as quoted by him above, and that the widow has uncontrolled power, in the Poortu, or dedicating by name; Daevu or consecrating to the deities; Paetrya, or performing acts of religion in the name of ancestors; Vrutu or keeping holy days; and charity &c. This is fixed too strongly to be now set aside by any Books with respect to what he has quoted from the Muha Bharutu and Narudu. We have to say that in the very Verse quoted by him, the word Dayu (Heritage) includes both real and personal

sonal property, and the widow is declared entitled to that Heritage, or Dayu. This is not contrary to any authority, and we bow to that of the Mitakshura quoted by him below.

The Court held these answers to be complete and satisfactory.

Respondents observed, upon the admission of Appellant that no division had at any time been made of Burachee, that he was disqualified from claiming even his own share, much more their's, because he was both blind and deaf.

Appellant retorted by asserting that Respondent Ruttunkoonwur being a childless widow, could neither act independent of her husband's relatives nor live alone.

These points were submitted to the Shastrees, who replied, If a man or woman be blind *and* (*or ?*) deaf, such gets no share of his father's property, but the other coparceners must provide him a maintenance; (3) if however after division these defects are removed by medicine or other means, he will receive a share; again, if either of these misfortunes should fall on him after separation, the share received by him does not revert to the other sharers, but is his own. This is declared in the Mit. (Book 2d, leaf 60, page 2d, line 2d, Cole. Mit. pages 361, 2.) With respect to the second question, of a childless widow, it is declared in the Mit. (Book first, leaf 12th, page 1st, line 6th,) "A woman "without a husband must not live apart from her father, mother, "son, brother, mother-in-law, father-in-law, or Mother's Bro-"ther; if she do, she is blameable, and incurs reproach." (4)

Appellant next urged that Respondent Ruttunkoonwur being a childless widow, could not possess the immoveable property of her husband, and that this was true under authority of the Mitakshura, he offered to state the issue of his Case.

The Shastrees were desired to state whether this were the case.

(3) See No. 37 of the Court of Appeal Cases, Vol. 1st page 411.

(4) See Case No. 36 page 449.

case. They framed a Table upon the famous Text of Yagnyuwulkyu in the 55th leaf of the Mit. (quoted in Bombay Cases No. 37,) defining the successive Heirs to the property of a man dying without male issue. They explained each term, laying down the rule, that the wealth of a Brahmun, on failure of all these persons, went to an Ugnihotri (one who preserves a sacred fire) or to any other Brahmun, the wealth of all the other classes going to the Prince in default of the other Heirs above laid down. They then said, In the 55th leaf, second page, and 8th line of the Mitakshura we find the words of Katyayunu, " The wife is heiress to her husband's wealth;" and (above, in the 6th line) Vridh Munoo says, " The wife is Heiress of the whole Estate of her " husband." In the 10th line of the same page, Bruhusputi says, " The wife is Heiress to the whole Estate of her husband, even if the father, Mother or Brother be alive." After a long discussion in the Mitakshura on this subject, it is finally declared that in default of a son the widow succeeds her husband. (5) In the 47th leaf, 1st page, and 14th line, are these words of Narudu, that " sons after the " death of their father shall all share his wealth equally;" and the word " Dhun," or " wealth" includes both real and personal property, as is warranted by the interpretation of various Books. The above verse of Bruhusputi also declares the wife Heiress to all the " wealth" of her husband, though in the whole Mitakshura no such words of Bruhusputi are to be found as " the wife shall take his immoveable property:" wherefore we hold, that both real and personal property accrue to the wife.

The Court declared this exposition clearly in favour of the right of the widow, in contradiction to the Appellant's assertion. With regard to the actual division of the Village, it appeared doubtful whether a complete one was ever effected, by making over one half of the lands to one party and half to the other. Respondent admitted that it was only the amount Rents that was divided, and that no separate Leases were given.

The

(5) Cole. Mit. from page 324.

The Court therefore called for evidence of the oldest cultivators to the possession of the parties respectively, prior to A. S. 1862. From their testimony, corroborated by the Receipts produced by them, it was clear that a division, as admitted by Respondents, of the proceeds or income of the Village, had been made regularly, and each party had concurrent jurisdiction over the Villages, but any other division was very doubtful. They distinctly proved the constitution of his Village to be Wuttundaree. Respondents Roopshunkur and Bhuwaneeshunkur were shewn to be the managing Agents on the part of the other Respondents.

With respect to the resignation by Respondent Poorun Bhudr of his rights by adoption, the Court held it, from the answers of the Shastrees, to be an act to which he was not competent; having once become adopted he could not free himself, but as he could not be compelled to take possession of the property, the question arose as to whom it belonged according to law; the law said, to the widow, if her husband had lived separate and had divided his property with the coheirs.

The Court was of opinion that the Niwar Putr or decision passed by the Peshwa in A. S. 1872, became seriously affected by the abdication by Poorun Bhudr of his adoption. That decision was passed in full support of the adoption; it recognized the right of the widow jointly with that of the adopted son, but it was a question if that right would have been so held had there been no such son. In this respect the decision as regarded the widow's right must be held neutral. Her right then depended upon its own merits, and so must be weighed. The most important document, and as regarded the widow the most satisfactory, because brought by her adversary, was the will of Wamun Patuk. Appellant had brought it forward to shew that the village could not be divided, the inference was not borne out by the text, which explicitly stated the income was to be shared as the other property.

The

The parties then went into evidence to shew how the village was enjoyed. There was no doubt of the income having been shared equally, but the administration or management of the village seemed doubtful; there was certainly no division of lands or of ruyut; it was however to be observed that the village was one paying a fixed rent; it was to no purpose to divide the lands, for by the tenure under which they were held no advantage could be gained. A stated income was by them paid, and this was divided between the parties. This established the widow's right. The Mitakshura, Chap. II. Section 1st, on the right of widows to inherit &c. the 39th and last clause set forth, "Therefore it is a settled rule, that a wed-" ded wife, being chaste, takes the whole estate of a man " who, being separated from his coheirs and not subsequently " reunited with them, dies, leaving no male issue." The question then remaining to be determined was, if the state of things in Burachee was such a division as would entitle the widow, under the above law, to take that which her husband possessed in Burachee in common with his other property. The Court held it was; the descendants of Wamun Patuk divided their inheritance; they divided the income of Burachee; each took his own share; that which was the divided and separated share of the husband dying without male issue was the right of the widow, and to this the Court thought her fully entitled, and passed judgment in her favor, nonsuiting the Appellant, and decreeing that the widow, Respondent Ruttunkoonwur, was entitled to half the share of the income of the village of Burachee. In regard to the question of the exclusive possession held by Respondent under the Niwar Putr, in consequence of the exclusive possession held before by the Appellant, it was directed that Appellant should account for the produce during his possession, the Respondents for their's, when a Balance was to be struck. Failing such an adjustment, the Appellant, in order to get into his share of the Village, might file an action to compel a Settlement, but until either one or the other course

was

was pursued and brought to an issue, the whole Village was to remain in the possession of the Respondents as under the Niwar Putr, for the same period that exclusive possession was held by the Appellant, who was to bear all costs of Suit.

Decree 29th April 1823.

Sudur Udalut.
Sitting Judge,
J. Sutherland.
Second Judge,

Appellant rested his claim to reversal of his Decree principally on allegations against the validity of the Niwar Putr. To ascertain this point in the most satisfactory manner, a copy of the Deed was transmitted through Government to the Commissioner in the Dukhun, who gave an account of the Peshwa's proceedings in the case, premising it with these observations. "The whole conduct of Çivil Jurisprudence un- "der the Peshwa's Government was intrusted to a person "styled the Nyayadheesh. It was his province to sit in open "Court to receive the petitions of complaint, and to redress "their wrongs, either by assembling a Punchayut, or by "going into the merits of the case himself. He then issued "such orders as he considered proper to the Moamlutdar or "local authority, but if any formal deed of adjustment, or "any Sunnud for land, or other real property, were required, "it was necessary for him to draw up the form and to sub- "mit it for seal and Sign to the Prime Minister, by whom it "was laid before the Peshwa. A memorandum usually ac- "companied the award, specifying the Sunnud or orders to "be given, and these being granted, they were entered on "the records of the Furnuvees. The Peshwa heard and "decided Suits himself, but this practise was not very gene- "ral, and the most common mode was to refer all petitions "to the Nyayadheesh, except when one of the parties was a "favorite, or was supported by some of the favorites of the "Prince.

"This system had its origin in the time of the great Ma- "dhoo Row. His father Balajee Bajee Row conducted all "these matters himself, or made over each particular case to "his Sur Soobehdars, or to his minister, or to any other per- "sons whom he chose to appoint." "The

" The first Nyayadheesh was the celebrated Ram Shastree, " who was aided by another person, nearly as notorious, called " Moro Huree. To these succeeded Aya Shastree, and then Ig- " neshwur (Yunyeshwur or Yedneshwur) Shastree. Bal Shastree " was the next, and the late Peshwa placed such implicit reliance " upon him, that on his return from Basseen in A. D. 1803, he " entrusted a Mootalikee Sikka to him, and thus rendered him " entirely independent in his own department. The little order " and arrangement which had previously prevailed, and the " check and record, which had been formed from the reference " to the Peshwa for his approval of the award and the issue of " the necessary orders, were completely lost. Bal Shastree de- " cided Suits and carried his decisions into effect without the " slightest controul, but after a few years he forfeited this grand " privilege by making an improper use of the seal and applying " it to purposes foreign to his jurisdiction. From this time few " awards were passed after the usual form and method, but the " few that were passed were decided by the Peshwa himself " with his Ministers, and of that number my enquiries, and the " existence of a Copy of the Summut Putr" (the Niwar Putr in dispute) " in the Duftur, lead me to conclude that the case " to which it refers was one. From an extraordinary circum- " stance and strange connection with a great political event " there is hardly a person in Poona who resided there at the time, " but is acquainted with the case."

" It will be in the recollection of the Honorable the Gover- " nor that for some time before the city was surrounded by " General Smith's army on the 8th May 1817, the Peshwa had " been particularly anxious to depute an agent to Calcutta, " in order to try what effect he would produce on the mind of " the Governor General. The execution of this favorite pro- " ject was only delayed by want of a proper and trust-worthy " person to whom the mission could be confided. Moro Dixit had " been strictly enjoined to keep a sharp look out for a suitable

" agent,

" agent, and at last a man named Ruttunjee Pundit was select-
" ed and approved of by the Peshwa. On Bajee Rao's mak-
" ing known to him his intention of employing him on this de-
" putation, he expressed his inability to quit his post until the
" business for the adjustment of which he had come to Poona
" was settled. This business was the suit of Poorun Bhudr
" against Ruvee Bhudr, the latter of whom had some years be-
" fore been placed in possession of the village of Burachee by
" an order obtained through the influence of the Modee. Ba-
" jee Rao, who was always keen, and on the alert, when any
" intrigue of Rajkarun was in agitation, told Ruttunjee Pun-
" dit that it should be no obstacle, for he would have it decided
" forthwith. Accordingly he in a day or two afterwards assem-
" bled the principal people of the City, seated himself in full
" Durbar, and had the decree, now produced by Poorun Bhudr,
" drawn up, sealed and signed, the customary order issued to
" the Vinchorkur to see that he was put in possession of the
" Village as directed, and instructions given to Moro Dixit
" to have the decree filed and entered in the records. This
" took place on the 5th May, at least that is the date of the
" award, and three days afterwards the city was invested by
" our Troops, but Ruttunjee Pundit was on his way to Cal-
" cutta.

" I have been unable to glean any more satisfactory infor-
" mation from the Duftur. No Summut Putr would seem to have
" been passed in A. S. 1862. Plaintiff (now Appellant)
" merely obtained an order from the Peshwa through the as-
" cendancy of the Modee, by which he was placed in posses-
" sion of the whole Village, but these orders were often verbal-
" ly given to the Jageerdars, as was the case in the latter in-
" stance of the award of A. S. 1872, and no written document
" is forthcoming. The only entry in the Duftur respecting the
" Village itself is contained in the accounts of 1161, and 1163.
" A. M. (the Arubee Sal) wherein it is stated that the Vil-
" lage of Burachee is alienated to Wamun Patuk. From

" that

" that period the district of Oolpar was assigned in Jageer (to " the Vinchoorkur) and the Duftur contains no account con- " nected with it."

Appellant now objected that this decision was not executed until September 1817, when the country had been taken possession of by the British Government under the Treaty of Poona of June 1817. To this the Sitting Judge replied, that the Oolpar Purgunna was conquered by the British after the breaking out of the war, which began with the Battle of Khurkee on the 5th November in that year, and the Purgunna of Oolpar was by the Treaty of Poona specially reserved to the Peshwa. The Cession of Oolpar actually took place many months after the date of the Niwar Putr. With regard to the point of adoption, it ought to be considered, as the adoption was renounced in a subsequent stage of the proceedings. The whole point for decision was, whether Appellant was ousted by legal authority. If he were, his claim must fall to the ground, for only on the contrary being the case could the right to the Village be tried on its merits. The answer from the Commissioner in the Dukhun placed the fact " that the Niwar Putr was a formal act of the Peshwa," beyond all doubt, and being a decision by competent authority duly acted on, no course was left but to support it. This would in fact only affirm the nonsuit of the Zilla Court, but the Sitting Judge referred the Case, because the grounds of the two Decrees were essentially different.

In whatever relation the two Respondents might now stand to each other, the grounds taken at the time of filing the suit ought to be the rule for guiding the decision, since the remaining point of renunciation of the adoption, even if satisfactorily proved, might have been made with a view to perplex the case, and the Court, by entering on the merits of the point of adoption, would be investigating and deciding on the rights of a person not only not regularly claiming, but refusing to be heard.

Competent Court, J. Romer, *Chief Judge*.

The Court fully concurring with the Judgment of the Zilla Court,

Court, resolved to uphold its Decree, which was affirmed accordingly against Appellant, with costs.

E. Ironside, *Third Judge*, Decree 13th May 1824.

N°. 133.

FURIDOONJEE JUMSHEDJEE,..... *Appellant*,

versus

MANIK BAEE, Widow of DORABJEE, after her death her Son BHIKA and Grandson ISFUNDIYAR..... } *Respondent*.

A SUIT was filed on the 16th February 1822 by Appellant against Respondent Bhika Dorabjee, to recover from him Rupees 84, due for 21 months' rent of a House mortgaged to Appellant by Respondent Bhika.

Surat Udalut, J. Vibart, *Register*. Sale of a house by a mortgagee permitted.

The defence was, that only Rupees 384 had been received by Bhika out of Rupees 401, the amount agreed on for the Mortgage. With the exception of this balance unreceived, the claim was admitted, both as regarded the mortgage and rent. Appellant withdrew his claim by a Razeenamu, having arranged with Respondent for the payment of the money in three months.

Order for attachment of Respondent's person issued on the 9th July 1822, and on the 27th Appellant petitioned the Court, since Respondent was in jail, to attach the house mortgaged to him, and sell it in execution of the Decree, Costs, and subsistence money, giving him up the balance in satisfaction of the mortgage. An order was to that effect issued.

The second suit, that now under appeal, was laid on the 14th December following by Respondent Manuk Baee, who prayed removal of the attachment, pleading that the house belonged formerly to her father-in-law Bahmunjee, from whom it devolved to her in A. S. 1847, when she redeemed it

from

from Jumshedjee, then living in it, and ejected him, since when it had remained in her own possession. Her son Bhika had no right to it, and she charged him and Appellant with seeking to rob her of the house by conspiracy, as Respondent had no power to mortgage the house or dispose of it in any way, it being made over to her for subsistence, and must furnish her funeral expenses.

Appellant rested his defence of the attachment on the acknowledgment of the mortgage by Respondent Bhika, who had full power to mortgage or dispose of it in any way he pleased, as representative of his father.

The mortgage Bond was dated 16th Shaban A. H. 1235 or 29th May 1820, and contained this condition, that the mortgager would redeem the house after three years, and it was specified that former mortgages had been cleared off with the money raised by this, and the Bonds delivered to the mortgagee.

The Court however declared from the evidence, that the mortgage bond and the attachment under it by Appellant, were illegal, because it had been proved that the house had been in Respondent Manuk Baee's hands since A. S. 1847, when she had redeemed it from Jumshedjee Jeejee Bhaee. It was also in evidence that she was in Bombay when her son Respondent executed the mortgage Bond. The attachment was therefore decreed to be raised as sued for, Appellant paying costs.

Decree 25th March 1823.

Sudur Udalut, *Sitting Judge*, J. Sutherland, *Second Judge*.

Respondent Manik Baee died after the pleadings in Appeal had been recorded, and the other Respondents now appeared to defend the case as the heirs, Respondent Isfundiyar not as son of Bhika but his coheir to the estate, as posthumous appointed son of Bhika's late brother Roostumjee. Respondent Bhika took no objection, in pleading, to the Zilla Court's decree, but required that due provision should be made for performance of his mother's funeral obsequies out if the proceeds of the house, before Appellant got them.

Isfundiyar

Isfundiyar rebutted the claim against the house, on the plea that he had an interest in it.

The Sitting Judge thought that the case from Manik Baee's demise would have a very different appearance if Bhikajee were the only heir, as he would then be bound by his own acts; but as Isfundiyar had also started forth, should he be allowed an interest, it would keep things as they were in Manik Baee's life time, as his claim would be separate and distinct from that of Bhikajee.

Whatever might be the merits of this case and of the various interests concerned, the Sitting Judge thought that Appellant was not at liberty on the 27th July 1822, under the condition of his mortgage claim, to sell the house or compel the redemption of it. If he allowed a bad tenant to occupy a house which he held in mortgage, it was done at his own risk, but he could not claim to break through the conditions of the mortgage merely for nonpayment of the rent by his tenant. The removal of the attachment should therefore be affirmed, and Appellant be nonsuited, but as the grounds were contrary to those taken by the Register, the case was referred for the consideration of a competent Court.

Competeat Court,
J. Romer,
Chief Judge.
E. Ironside,
Third Judge.
Decree 13th May 1824.

The Court held that the Appellant's claim for rent, under the Decree in the first suit, ought first to be satisfied by the sale of the house mortgaged to him, and as he would have been entitled, at the time he attached the house, to arrears of rent on the 27th July 1822, or at least to have prayed that the surplus proceeds of the sale should have been held in deposit for his use until he could claim them under the condition of the mortgage, the Court was of opinion that the sale of the house should be no further delayed, the Appellant, after receiving the amount of his arrears of rent, being also paid the sum lent on the mortgage. Should any surplus then remain, it was to be applied to defraying the Appellant's costs of suit, which he would likewise recover from any other property of the deceased

ed Manik Baee he might be able to point out. With regard to the expense of Manik Baee's funeral, the Appellant 'to be considered as responsible for any actual outlay on this account, which the person or persons who performed the last duties to her remains might lawfully demand, or be able to prove to be due.

Decree 13th May 1824.

The Court on these grounds resolved to reverse the decision of the Register, and decreed that the house attached by the Appellant be sold and the proceeds applied to the satisfaction of the Decree No. 849 of 1822, under the above provisions.

N°. 134.

Mr. RULIYAT and her son JOUHUR WULLUBH..... } *APPELLANTS,*

VERSUS

MADHOWJEE PANACHUND.....RESPONDENT.

Ahmudabad Udalut, Dusa Morh Maduliyu. Buayun Cast, R. Boyd, *First Register.*

RESPONDENT on the 29th January 1823 filed a Suit in the Ahmudabad Court, to recover from Appellants the sum of Rupees 799, damages for breach of a contract of marriage, between the Respondent, and Gunga, the daughter of Appellant Ruliyat. It was stated that the contract took place in A. S. 1878, being executed according to the custom of the cast in writing, and jewels and clothes to the value of Rupees 351 delivered by Respondent.

Contract made by a Brother with his mother's consent for the marriage of his Sister, held valid and binding.

The defence was that Appellant Jouhur had been cajoled into execution of the contract, and that it had been distinctly disavowed by Appellant Ruliyat, without whose consent no engagement of the kind was valid. Further that a promise, such as had been given by Jouhur, did not in their Cast constitute a Mungnee, which was only confirmed by delivery from the bride's family

family of one Rupee and a Cocoanut to that of the bridegroom, which was not in this case done.

Many witnesses were called, and it was clear from their concurrent testimony, that contracts of marriage could not be set aside in this Cast, unless either the Bride or Bridegroom be deformed, impotent, or disqualified by some such cause. That a brother may contract his sister to another in marriage with consent of their mother, whose permission is required before the contract is valid; and that contracts in writing are binding on the contracting parties, unless both of them agree to have it set aside. Instances of breach of it were at the same time adduced, but appeared all to have arisen from natural defect in one of the parties. It was also proved, that Appellant Ruliyat was not present at the drawing up of the contract, but that she gave her son full power to act on her part, as admitted by Jouhur at the ceremony, and by herself at the time; and in proof of this it was shewn that Appellant received as a present for giving her consent, the sum of Rupees 700, termed "Khada khaee" or "Sweetmeat money." Respondent had likewise given security for the due performance by himself of his part of the engagement, one Jumna having bound himself by a separate Bond to furnish the quantity of jewels and clothes agreed for. All the exceptions in favor of voiding contracts on plea of impotency &c. had occurred within the last ten years, as, before that, no contract had been voidable on any account.

The Court held it thus established in evidence that Respondent was betrothed to the daughter of Appellant Ruliyat; that contracts or betrothals were not allowed to be set aside in the Cast to which the parties belonged, according to the ancient usage of the Cast, although it appeared that an innovation in the system which regulated these contracts, had of late been effected in the Cast; which innovation the Court was inclined, under the admission of the Appellants' witnesses, to conclude was operative only in cases of personal deformity in

females'

females, and impotence in males, objecti ons which were not in this instance pleaded. As the contract in this case was merely conditional, the Court thought it just to order, that Respondent give good and sufficient security for the delivery to Appellants of the clothes and ornaments alluded to in the evidence, and set forth in the contract itself; and that on these articles being delivered to Appellants, the marriage be completed at a time consistent with the usage of the Cast, and that in case they did not complete the marriage, or shew good cause why it was not completed, they should pay to Respondent the sum of Rupees 799 as damages, and that Appellants bear costs.

Decree 15th April 1823.

Sudur Udalut, *Sitting Judge.* J. Romer, *Chief Judge.* Decree 9th March 1824.

The ground of Appeal was, that the witnesses examined in the Zilla Court had given false testimony.

The Sitting Judge held that the evidence of consent by receipt of the present by Appellant Ruliyat, which was deemed disgraceful and only done secretly, was strong to the point, and had not been shaken. The Decree of the Zilla Court was therefore affirmed against Appellants, with Costs.

N°. 135.

MEER SUDR OOD DEEN KHAN SUFDUR JUNG BUKHSHEE..... } *APPELLANT,*

VERSUS

QAZEE MEERUN, MEER WULEE OOD DEEN HOOSSAIN, and ROOSTUMJEE HORMUZJEE..... } *RESPONDENTS.*

Sudur Udalut, G. W. Anderson, *Judge.*

THE suit was filed by Appellant on the 6th September 1820, to obtain possession of a piece of ground.

Sale by a moohummudan of a certain piece of land containing burying

It was stated in the plaint, that the Nuwab of Surat and Appellant, and Respondent Meer Wulee Ood Deen, possessed between them a piece of ground called Kothula within the walls

near

near the Viriow gate. It was formerly a garden, but had been since converted into a burial ground. It thus became Wuqf, the sale of which was not permitted by law. Respondent Meer Wulee Ood Deen had notwithstanding this, disposed of his share to Respondent Roostumjee, and the other Respondent had, as Qazee, authenticated the Deed of Sale. The property being Wuqf rendered the sale illegal, and besides this flaw in the transfer, Appellant possessed a right of pre-emption as being a joint sharer in the common ground, so, if sale of it were permitted, the present act must be annulled, and an opportunity given him of purchasing the ground.

ground, annulled in consequence of violation of the right of pre-emption, and the laws relating to burying ground and wuqf.

For these reasons reversal of the sale was prayed for.

Respondent Meer Wulee ood Deen Hoossain pleaded that the ground was not Wuqf; if it were it could not be divided, nor was ground constituted Wuqf without a regular Sunnud, whereas this ground had yielded profits which were regularly divided out among the proprietors, a nd in the year A. H. 1219 a separation of shares was effected between Appellant's father and himself. Having since contracted debts to Respondent Roostumjee, he in A. H. 1234, had the land, exclusive of the Tombs in it, valued, and sold it for Rupees 4,325 to him, but not until he had given the Nuwab an offer of it under his right of pre-emption (Appellant's being denied under the former separation) but as he did not tender above a third of the money, a representation was made to the Udalut, and the sale eventually permitted to Respondent Roostumjee, who rested his title to purchase on that of the other Respondent to sell.

Respondent Qazee Meerun being dead, his brother appeared on notice and pleaded exemption from any demand of Appellant, on the ground that his act was an official one, and he was not liable to an action for due performance of his duty.

Respondent Meer Wulee Ood Deen proved his tender of the ground to the Nuwab, in virtue of his right of pre-emption.

The

The Deed of Sale bore date 10th Rujub A. H. 1235, or 24th April 1820, and specified five pieces of land sold to Respondent, the Tombs being thereby excepted.

Two witnesses proved that Respondent, the Qazee, gave notice to Appellant of the intended sale, and that the Bukhshe, Appellant, replied by a question, whether the Qazee knew of any law permitting the alienation of Wuqf. This the Appellant likewise established.

A Report of the Mooftee, of the nature of the disputed property, was recorded, with a plan of it, shewing the Tombs to be about the centre of the whole piece of ground. A question was then put to the Moohummudan Law officers, to ascertain whether the plea of its becoming Wuqf (1) made the sale of it invalid, and whether the claim of pre-emption also rendered the sale null?

They answered, it is declared in the law, that if any person prepare a piece of ground for a burying place for himself and his friends, that ground becomes public for the burying of all other Moossulmans, and should the original proprietor forbid their interment it would be a trespass on his part, for a burying ground (Qubr stan) is in no wise to be considered private property. This principle is laid down on the subject of "burial of the dead" in the Futava faiz Nuklishubundee; the Sulaukun Musroodee; the Nisab ool Ihtisab, and other books, and since a burying ground is not private property, the sale of it is improper, whilst we further understand that so much as the owner of the ground has allotted for a burying ground, and no more, is to be considered as burying ground."

The Court held, that as the law did not permit "burying ground" to be sold, whilst Respondents had failed to prove that Appellant had given up his right of pre-emption, the sale should be annulled, leave being granted to Respondent Meer Wulee

(1) See No. 27 of the Bombay Cases.

Wulee ood Deen, to make a fresh sale, excluding the ground used for burial, and giving such notice to Appellant as his right of pre-emption entitled him to by law. Respondent Meer Wulee ood Deen alone was adjudged to pay costs, the other Respondents being declared to have incurred no responsibility.

Decree 5th April 1823.

Appellant was dissatisfied with this decision, in as much as it did not declare the whole ground unsaleable because Wuqf, and he appealed to get the Zilla Decree so far amended.

Sudur Udalut, *Sitting Judge*, J. Romer, *Chief Judge*. Decree 9th March 1824.

Respondent adhered to his defence in the Zilla Court.

The Sitting Judge felt satisfied, that there were no grounds whatever for considering the land in question to be Wuqf, and the Zilla Court's Decree was affirmed with Costs.*

N°. 136.

JAEESHUNKUR BHUWANEESHUNKUR, APPELLANT,

VERSUS

BALKRISHNU LUKMEEDUT, and others, RESPONDENTS.

THIS Suit was filed in the Kaira Court on the 20th March 1822, Appellant claiming Rupees 601 from Respondents as damages for loss of character, caused by their turning him out from a Feast at the house of Teemojee, one of the Respondents, on the occasion of a cousin's death. Appellant said he was invited, but turned out by Respondents Balkrishnu and Teemojee, whilst the other Respondents told the whole Cast that they would not eat with them if Appellant were allowed to come.

Kaira Udalut, G. Giberne, *Register*. Kherawal Bunyans.

Expulsion of Appellant from Cast, upheld.

Respondents answered that Appellant's quitting the house was his own voluntary act, the effect of anger at abuse received from

* This case was appealed to the King in Council after the Reports had gone to the Press. All others so appealed have been omitted in this selection by direction of the Judges.

from Jookunwur the Sister of Teemojee. It appeared that the Cast was divided into Six Turs, the Appellant and Respondents being all of the same Tur. The evidence adduced by Appellant was little to the purpose. No act of expulsion of Appellant by Respondents was attempted to be proved, and the only thing attaching to Respondent Teemojee was, that he begged Appellant to come either before or after the Feast on a certain occasion, because the whole Tur would refuse to attend the Feast if Appellant were there. One of the witnesses heard the women of the house tell Appellant, either to wait till the Cast had finished, or to sit inside the house and eat his portion.

The Court held that this evidence proved nothing, and to take more was useless. An attempt was therefore made to arrange matters between the parties. Respondents offered to sign a paper, declaring that they had no objection to eat with Appellant provided he acted according to the customs of the Cast.

The Court thought nothing more could be expected from them, and made the offer to Appellant, who however positively refused to receive any paper. A nonsuit was pronounced against him for costs, as he had totally failed in proving his case, and as the attempt at arrangement had not succeeded, the case was dismissed.

Decree 18th April 1823

The ground of appeal was general dissatisfaction at the Decree, and Respondents justified the act of expulsion by alleging that the Appellant had refused to follow a Cast custom in contributing a small sum, which is annually collected from all the members, in the month of Ashadh, for a religious purpose. This point was pleaded at last in the lower Court, and it was again stated in the answer of the Respondents in the Sudur Udalut, but Appellant did not notice or reply to it.

Sudur Udalut, *Sitting Judge.* J. Romer, *Chief Judge.* Decree 30th March 1824.

The Sitting Judge agreed with the Register in finding no special act under which the Appellant was entitled to damages, and for the general grounds alleged by the Respondents as the

reason

reason for not inviting the Appellants, the Court considered the justification good; at least the act of the Tur in this respect did not subject them to answer the Appellant in damages; he had nothing to do but to conform to the custom of the Cast, which did not appear to be unreasonable, or unduly applied to him.

The decision of the Register dismissing the Appellant's Suit, was accordingly affirmed against him with Costs.

N°. 137.

KUMLA BUHOO, widow of NARAYUNSHUNKUR ICH, HASHUNKUR, and HUREENARAYUN ROOPNARAYUN. } *APPELLANTS,*

VERSUS

MUNEESHUNKUR ICH, HASHUNKUR. *RESPONDENT.*

Surat Udalut, J. Vibart, *Register.* Vurnugur Nagur Brahmuns.

Action by Respondent to compel Appellant, his brother's widow, to reside with him, and to dissolve a contract made between her and the other Appellant for the marriage of their Children, Respondent claiming sole right to contract his niece, as legal guardian to her.

Decreed in Respondent's favor in both Courts.

RESPONDENT on *the 4th April 1823,* sued in the amount of Rupees 800 to oblige Appellant, Kumla Buhoo, the widow of his brother Narayunshunkur, to reside in the family house, and to dissolve a contract of marriage made by her between her daughter and the son of Appellant Hureenarayun. Respondent said he and his brother Narayunshunkur, lived in the same house with their mother without separating their estate. When Narayun died in A. S. 1875 Appellant Kumla Buhoo was pregnant; she afterwards brought forth a daughter, and between two and three months ago left his house, and went to her father's, and there effected this marriage contract, which Respondent declared he alone was entitled to do, and to act as guardian to the mother, Kumla Buhoo, his brother's widow, she being only 18 years of age.

Appellant Kumla Buhoo on her own part answered that she had

had been obliged since her husband's death to contract debts for herself and daughter, as Respondent would not contribute to their maintenance. She had made a demand on him to arrange the marriage of her daughter, but was told that it was her place, as the girl's mother, to provide for her child's welfare, and she might look out for a husband for her. This declaration she took care to have witnessed by several people, as well as his promise to bear the expense, and the contract was therefore sufficiently confirmed by consent of the girl's friends. Appellant moreover claimed for herself a separate residence and maintenance of Rupees 64 per annum from Respondent.

The other Appellant also rested his defence on the consent of Respondent having been obtained publicly to Appellant Kumla Buhoo, contracting her daughter in marriage, adding that a contract of Marriage once made was not permitted by the Shastr to be broken.

Respondent proved by five witnesses, that Appellant Kumla Buhoo confessed the contract to be clandestine, and that she was at that time living with the child at her Father's house, though formerly dwelling with Respondent. Those who were of the Cast said the contracts of Marriage might be broken, by either party.

Appellant called three witnesses, to prove that the consent of Respondent was obtained to the contract. But they were all interested witnesses, one the brother of Kumla Buhoo's mother, another the partner of Appellant Huree narayun, and gave inconsistent evidence on all the most material points. Kumla Buhoo's Uncle at the same time admitted that a contract of marriage might be broken on failure of payment of Dower, or dispute of any kind, and this was also admitted by the others. A fourth witness was brought to swear that Respondent admitted to him that he had consented to the contract being made by Appellant Kumla Buhoo.

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The Court put a question to the Shastrees to learn, in case a member of an united family left a widow and infant daughter and brother, but neither father, nor son, who would be bound to provide the child's marriage? 2dly, If the widow went with the child to live with her father, whether her brother-in-law might oblige her to reside with himself, and insist on maintaining her and her daughter? 3d, How a plea by the widow, that her brother-in-law had resigned all claim upon her, would affect the case?

They answered,

That the right of marrying a female belonged, first to her father, then to her Grandfather, then to her brother, then to her Paternal Uncle, then to her mother; and amongst these, if the first in order, who might be in existence, were of unsound mind, he would lose such right, and the one in succession to him would become entitled to contract her in marriage. (1) And in this case, where the child's Uncle and Mother were alive, the right belonged to the Uncle, and the Mother had none whatever.

2d. The widow must take her daughter and live with her Mother and Brother-in-law in their house. The Brother-in-law was entitled to provide her with a maintenance, and to protect her. Should she not agree with them, the Brother must give up a part of the house for her separate residence, affording her a suitable maintenance.

3d. The marriage of the child must according to the Shastr be performed in her Father's house; even if the Uncle gave his permission for the Mother to contract, it ought to have been celebrated in his house, but if the consent were proved, the contract might be executed by the Mother. This they said was not specified in the Shastr, but appeared to be the spirit of it.

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(1) Vide Note to No. 5 of the Bombay Cases.

The Court observed that the superior right of the Uncle to contract his Niece in marriage was admitted by the Mother, Appellant, in her answer, and she had failed to prove her assertion that she made the contract with the consent of the Respondent, and the evidence adduced by her was very contradictory. She allowed that the marriage was contracted at her Father's house, and from the custom of the country, it was evident that the contract of marriage should have been made at the Respondent's house, not at the house of her Father.

From the evidence of the Respondent's witnesses, also, it had been clearly established, that the Appellant Kumla Buhoo made the contract without the consent or knowledge of the Respondent. According to the Hindoo Law it was incumbent upon, and the duty of, the Appellant Kumla Buhoo to live with her Mother-in-law and Brother-in-law in her Husband's house, and from the pleadings of the parties and the evidence on both sides it had been proved that contracts of marriage are dissolved and set aside in the Cast of the parties. Under these findings the Court held the Respondent's claim good, and therefore passed a Decree in his favour, ordering that the contract of marriage of Appellant Kumla Buhoo's daughter with the son of the Appellant Hureenarayun be dissolved, and that Respondent be at liberty to dispose of her in any manner he pleased, and that Appellant Kumla Buhoo herself should, as directed by the Shastrees, live in her Husband's house with her Mother-in-law, and Brother-in-law, the Respondent, who was at the same time required to maintain her and her daughter. Should they not agree to live together, Respondent to give her some rooms in his own house for her accommodation, where she, with her daughter, was to maintain herself at the expense of the Respondent. Costs of suit to be borne equally by the parties.

Decree 21st April 1823.

Sudur Udalut, *Sitting Judge.* J. Romer, *Chief Judge.*

The grounds taken in appeal were, that Respondent knew of the betrothal, as funds were demanded on account thereof. That a Mother can betroth and give in marriage her daugh-

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the Cast of the parties. Fur
agree, it is common for a wo
tance, to live separate from her h
Dhurm Shastr ruled that a widow was
among her own kin, or on failure amon
prayed that Respondent might be compelled
expenses of the wedding, and give her a sepa

In regard to the first point, the Court concur
la Register in considering that the Respor
warning of what was about to take pla
firmation by the Sitting Shastree of the
exposition given by the Shastree of the S
other points above set forth were settled
the Law being clear and distinct on eac
Register was therefore affirmed, with

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